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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals

PROPOSED AMENDMENT

8 CSR 10-5.010 Appeals to an Appeals Tribunal. The division is amending sections (2) and (5).

PURPOSE: This amendment amends the definition of "appear" in a telephone hearing to conform to the use of a telephone conference bridging system, corrects statutory citations for amended statutes, and inserts necessary punctuation as needed.

(2) For purposes of these regulations, the following definitions apply:

(B) Appear means that the participants—

1. Arrive at the physical location of the hearing at the time and location set forth on the notice of hearing; or

2. *[Provide]* **Join the** telephone *[numbers]* **conference** as instructed on the notice of hearing *[within the designated time frame and answer]* at the time of the hearing;

(C) Good cause—For the purposes of sections *[288.070.8]* **288.070.10** and 288.130.5, RSMo, and of this chapter, good cause shall be those circumstances in which the party acted in good faith and reasonably under all the circumstances;

(E) Party—The individual, agency**,** or business entity which has taken action to become an interested party pursuant to **sections** 288.070, 288.130, and 288.160, RSMo;

(5) Time Limit for Appeal.

(A) An appeal to a determination or redetermination under section *[288.070.4]* **288.070.6**, RSMo**,** shall be filed within thirty (30) calendar days of the date the determination or redetermination was delivered in person or mailed to the appellant's last known address.

(B) An appeal to an *ex parte* determination or redetermination under section 288.130.4, RSMo**,** shall be filed within thirty (30) calendar days of the date of the mailing of the determination or redetermination to the party's last known address or, in the absence of mailing, the date of personal service to the party.

(C) A petition for reassessment shall be filed within thirty (30) days of the date the assessment was mailed to the petitioner in accordance with section 288.160, RSMo**,** or, in the absence of mailing, the date of personal service to the petitioner.

(E) Fax transmissions of appeals and petitions for reassessment that are received on a regular workday will be considered as filed on the date of receipt. A fax transmission received on a Saturday, Sunday**,** or legal holiday will be considered filed on the next regular division workday. Date and time of receipt will be determined by the division's receiving fax machine. Persons filing by fax transmission must retain the receipt with the original document for reference by the hearing officer if so requested.

(F) In computing any period of time prescribed or allowed by these rules, the date of the issuance of a determination, redetermination, assessment, order**,** or decision shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday**,** or legal holiday; in which event, the period shall run until the end of the next day that is not a Saturday, Sunday**,** or legal holiday. For the purpose of these rules and Chapter 288, RSMo, legal holiday means:

1. Those dates designated public holidays by Chapter 9, RSMo; and

2. Any other day designated a public or legal holiday by the governor.

*AUTHORITY: section[s] 288.190**, RSMo 2010** and **section** 288.220.5, RSMo 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 12, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Gracia Backer, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—**Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.010] ***10 CSR 26-2.010*** **Applicability**. The commission is moving the rule, amending sections (1)–(3), and deleting section (4).

PURPOSE: The commission proposes to clarify the definition of an underground storage tank. The commission proposes to move the rule to 10 CSR 26-2, to amend rule number references, to delete section (4), and to update the citations in the authority section of the rule.

(1) The requirements of this chapter apply to all owners and operators of an underground storage tank (UST) system as defined in *[10 CSR 20-10.012]* **10 CSR 26-2.012**, except as otherwise provided in sections (2)–(4) of this rule. Any UST system listed in section (3) of this rule must meet the requirements of *[10 CSR 20-10.011]* **10 CSR 26-2.011**.

(2) The following UST systems are excluded from the requirements of this chapter:

(A) Any UST system holding hazardous wastes listed or identified in the Missouri Hazardous Waste Management Law, sections 260.350–260.434, RSMo**,** and the rules promulgated thereunder or a mixture of hazardous waste and other regulated substances, except for waste oil as defined in 10 CSR 25-11.279;

(E) Any UST system that is installed within a vault, if all exterior surface areas of the tank may be visually inspected without removal of backfill, gravel, sand, or other fill material;

*[(E)]***(F)** Any UST system that contains a *de minimis* concentration of regulated substances; and

*[(F)]***(G)** Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(3) Deferrals. Rules *[10 CSR 20-10.020–10 CSR 20-10.053]* **10 CSR 26-2.020–10 CSR 26-2.053** and closure requirements in *[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064** do not apply to any of the following types of UST systems:

[(4) Deferrals. The release detection requirements of rules 10 CSR 20-10.040–10 CSR 20-10.045 do not apply to any UST systems that store fuel solely for use by emergency power generators.]

*AUTHORITY: sections 319.100, 319.105, 319.107, 319.111***,** *and 319.114, RSMo [1994]* ***2000*** *and* ***sections*** *319.109[, 319.132] and 319.137, RSMo Supp. [1995]* ***2010****. This rule originally filed as 10 CSR 20-10.010. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Jan. 2, 1996, effective Aug. 30, 1996. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions seventy-two thousand dollars ($72,000) aggregate cost or one thousand eighty dollars ($1,080) annually, depending on compliance method selected, to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities one hundred ninety-two thousand dollars ($192,000) aggregate cost or two thousand eight hundred eighty dollars ($2,880) annually, depending on compliance method selected, to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:
10 CSR 20-10.010 Applicability
Type of Rulemaking:
Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	**Estimated Cost of Compliance in the Aggregate**
Federal, State, County, City owned or affiliated underground storage tank owners	$72,000 (one time) or $1,080 (annual)
Missouri Department of Natural Resources	$0

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires monthly monitoring for tanks that store fuel for emergency generator use. Under the current regulations, tanks that store fuel for emergency generators are not required to monitor their tanks for leaks, even though the tanks, piping, and equipment are typically the same equipment found at a gas station. The proposed change would resolve this inequitable application of the release detection requirement. The following summarizes assumptions used in estimating the cost of the required site characterization activities:

- Based on information submitted to the department, more than 92% of facilities with emergency generator fuel storage tanks already document compliance with these requirements.
- The remaining 8% may actually comply, as well, but did not report these measures as it is not currently required that they do so.
- The cost of compliance with this requirement may range anywhere from $15 per month for a monthly service to, on average, $9,000- $15,000 to purchase an electronic monitoring system.
- At least 25% of the facilities with emergency generator tanks have a public affiliation (federal, state, county or city owned or affiliated). There are approximately 270 facilities with emergency generators.

Total cost for public sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- 270 facilities x 8% (number that would need changes) x 25% (public sector)= 6 facilities
- 6 facilities x $12,000 (average electronic monitor) = $72,000 one time OR
- 6 facilities x $180 (annual monitoring cost) = $1080 annually

Please note, by removing this deferral for emergency generator tanks in 10 CSR 20-10.010, the tanks must comply with 10 CSR 20-10.040 through 10 CSR 20-10.045. All of those costs are included in this fiscal note.

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources
The Department of Natural Resources' Hazardous Waste Program already tracks these facilities and inspects their entire tank system, including monitoring systems. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.010 Applicability
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of emergency generator tanks • Hospitals • Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems	Approximately 270 facilities	$192,000 (one time) or $2,880 (annually)

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires monthly monitoring for tanks that store fuel for emergency generator use. Under the current regulations, tanks that store fuel for emergency generators are not required to monitor their tanks for leaks, even though the tanks, piping, and equipment are typically the same equipment found at a gas station. The proposed change would resolve this inequitable application of the release detection requirement. The following summarizes assumptions used in estimating the cost of the required site characterization activities:

- Based on information submitted to the department, more than 92% of facilities with emergency generator fuel storage tanks already document compliance with these requirements.
- The remaining 8% may actually comply, as well, but did not report these measures as it is not currently required that they do so.
- The cost of compliance with this requirement may range anywhere from $15 per month for a monthly service to, on average, $9,000- $15,000 to purchase an electronic monitoring system.
- A maximum 75% of the facilities with emergency generator tanks are privately owned. There are approximately 270 facilities with emergency generators.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- 270 facilities x 8% (number that would need changes) x 75% (private sector)= 16 facilities
- 16 facilities x $12,000 (average electronic monitor) = $192,000 one time OR
- 16 facilities x $180 (annual monitoring cost) = $2,880 annually

Please note, by removing this deferral for emergency generator tanks in 10 CSR 20-10.010, the tanks must comply with 10 CSR 20-10.040 through 10 CSR 20-10.045. All of those costs are included in this fiscal note.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.011] ***10 CSR 26-2.011*** **Interim Prohibition for Deferred Underground Storage Tank Systems**. The commission is moving the rule and amending sections (1) and (3).

PURPOSE: The commission proposes to amend the rule to update referenced documents. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) No person may install an underground storage tank (UST) system listed in *[10 CSR 20-10.010(3)]* **10 CSR 26-2.010(3)** for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction)—

(3) The determination in section (2) of this rule should comply with the following recommended practice: *[The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems]* **NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002**. **This document is incorporated by reference without any later amendments or modifications. To obtain a copy contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org.**

AUTHORITY: section[s] 319.105, RSMo [Supp. 1989] ***2000*** *and [644.041, RSMo 1986]* ***section 319.137, RSMo Supp. 2010****. This rule originally filed as 10 CSR 20-10.011. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.012] ***10 CSR 26-2.012*** **Definitions**. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to define specific words used in this chapter. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Many definitions relevant to this rule are set forth in the underground storage tank law in section 319.100, RSMo. **The regulations set forth in 40 CFR part 280.12, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions.** The definitions set forth in 40 CFR 280.12, *[July 1, 1998, are incorporated by reference,]* **are** subject to the following additions, modifications, substitutions**,** or deletions in the subsections:

(A) Definitions beginning with the letter A. *[(Reserved)]*

1. "Annual" means recurring, done, or performed every three hundred sixty-five (365) days.

2. "Annually" means at least once every three hundred sixty-five (365) days;

(I) Definitions beginning with the letter I.

1. The definition for "implementing agency" in 40 CFR 280.12 is not incorporated into this rule.

2. The term*[s]* "in-operation*[,]*" *["in-service" and "in-use" are equivalent and]* means input or output that occurs on a regular basis for the tank's intended purpose. *[In determining the status of a tank, the department may consider factors including, but not limited to: routine input or outputs from the tank and the activity status of tank-related operations at the premises where the tank is located.]*

3. The terms "in-service" and "in-use" are equivalent and mean that the tank system contains more than one inch (1") of a regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system of regulated substance. A tank is considered to be *[in-operation,]* in-service*[,]* and in-use beginning with the first input of a regulated substance into the tank system*[;]***.**

4. The term "installer" means any person, partnership, corporation, company, business, firm, society, or association that installs part or all of an underground storage tank system;

(M) Definitions beginning with the letter M. *[(Reserved);]*

1. "Month," unless otherwise stated, means thirty (30) days.

2. "Monthly" means at least once every thirty (30) days;

(O) Definitions beginning with the letter O.

1. In the definition for "operational life" in 40 CFR 280.12 incorporated in this rule, substitute "*[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064**" for "Subpart G."

2. The terms *["out-of-operation,"]* "out-of-service" and "out-of-use" are equivalent and mean *[input or output activity no longer occurs on a regular basis for the tank's intended purpose.]* **that the tank system has been emptied so that no more than one inch (1") of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.**

3. The definition for "owner" in 40 CFR 280.12*[,]* is not incorporated in this rule**,** and the definition in section 319.100(9), RSMo, shall be used instead;

(R) Definitions beginning with the letter R.

1. The definition for "regulated substance" in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(14), RSMo, shall be used instead.

2. The definition for "release" in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(15), RSMo, shall be used instead*[;]***.**

3. "Routinely contains regulated substance" means that a regulated substance regularly passes through the piping, but does not necessarily mean that the piping continuously holds a regulated substance. Satellite lines, gravity piping, and remote fill lines, including lines from aboveground storage tank(s) to underground storage tank(s), all routinely contain a regulated substance;

(T) Definitions beginning with the letter T. *[(Reserved);]*

1. "Triennial" means recurring, done, or performed every thirty-six (36) months.

2. "Triennially" means at least once every thirty-six (36) months.

AUTHORITY: sections ***319.100,*** *319.105, 319.107, 319.111,* ***and*** *319.114, RSMo [1994]* ***2000*** *and [319.100,]* ***sections*** *319.109[, 319.132] and 319.137, RSMo Supp. [1998]* ***2010****. This rule originally filed as 10 CSR 20-10.012. Original rule filed April 2, 1990, effective Sept. 28, 1990. For intervening history, please consult the* ***Code of State Regulations****. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.020] ***10 CSR 26-2.020*** **Performance Standards for New Underground Storage Tank Systems**. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to update referenced documents, clarify vague language, and include more relevant, modern equipment descriptions. The commission proposes to amend what may and may not be installed in new systems, specifically changes aimed to help prevent releases to the environment. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) In order to prevent releases due to structural failure, corrosion**,** or spills and overfills for as long as the underground storage tank (UST) system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(A) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains *[product]* **a regulated substance** must be protected from corrosion, in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as follows:

1. The tank is constructed of fiberglass-reinforced plastic and complies with *[one (1) or more of the following industry codes:]***—**

A. Underwriters' Laboratories Standard 1316, *Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products,* ***Alcohol and Alcohol-Gasoline Mixtures,*** **revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**; or

B. *[American Society of Testing and Materials Standard D4021-86, Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks; or]* **Other standards or publications approved by the department; or**

2. The tank is constructed of steel and cathodically protected in the following manner:

A. The tank is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in *[10 CSR 20-10.031]***10 CSR 26-2.031**(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with *[10 CSR 20-10.031]* **10 CSR 26-2.031** or according to guidelines established by the department; and

E. The following codes and standards may be used to comply with paragraph (1)(A)2. of this rule:

(I) Steel Tank Institute *Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks*, **revised 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com/*:*;**

(II) Underwriters' Laboratories Standard 1746, ***Standard for External** Corrosion Protection Systems for **Steel** Underground Storage Tanks*, **revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**;

(III) *[The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems]* **NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org**;

(IV) Underwriters' Laboratories Standard 58, *Standard for Steel Underground Tanks for Flammable and Combustible Liquids*, **revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**; **or**

3. The tank is *[constructed of a steel, fiberglass-reinforced plastic composite that complies]* **a composite tank with a steel inner tank and a non-metallic external thick film coating or the tank is a steel inner tank constructed with a non-metallic external jacket forming a secondary wall. Either of these tanks shall comply** with one (1) of the following industry codes:

A. Underwriters' Laboratories Standard 1746, ***Standard for External** Corrosion Protection Systems for **Steel** Underground Storage Tanks*, **revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**; *[or]*

B. *[The Association for Composite Tanks]* **Steel Tank Institute's** ACT-100, *Specification for [the Fabrication of FRP Clad Underground Storage Tanks] **External Corrosion Protection of FRP Composite Steel USTs (F894)***, **revised June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;**

C. Underwriters' Laboratories Standard 58, *Standard for Safety for Steel Underground Storage Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or

D. Steel Tank Institute's ACT-100-U, *Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks*, F961, June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; or

4. The tank is constructed of metal without additional corrosion protection measures provided that—

A. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(B)4.A. of this rule for the remaining life of the tank; or

5. The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1)(A)1.–4. of this rule;

(B) Piping. The piping that routinely contains regulated substances and is in contact with *[the ground]* **an electrolyte, including but not limited to soil, backfill, and/or water,** must be properly designed, constructed**,** and protected from corrosion in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as follows:

1. The piping is constructed of fiberglass-reinforced plastic;

2. The following codes and standards may be used to comply with paragraph (1)(B)1. of this rule:

A. Underwriters' Laboratories *[Subject]* ***Standard** 971, UL Listed [Non-Metal Pipe] **Nonmetallic Underground Piping for Flammable Liquids***, **revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**; and

B. Underwriters' Laboratories Standard 567, *[Pipe Connectors for Flammable and Combustible and LP Gas] **Emergency Breakaway Fittings, Swivel Connectors and Pipe Connection Fittings for Petroleum Products and LP-Gas***, **revised 2003. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com**;

3. The piping is constructed of steel and cathodically protected in the following manner:

A. The piping is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in *[10 CSR 20-10.031]* **10 CSR 26-2.031**(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with *[10 CSR 20-10.031]* **10 CSR 26-2.031**; and

E. The following codes and standards may be used to comply with paragraph (1)(B)3. of this rule:

(I) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, **revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org**;

(II) *[American Petroleum Institute Publication 1615, Installation of Underground Petroleum Storage Systems]* **American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**;

(III) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*, **revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**; *[and]*

(IV) *[National Association of Corrosion Engineers Standard RP-01-69]* **NACE International SP-0169-2007**, *Control of External Corrosion on Submerged Metallic Piping Systems*,

revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; **and**

(V) Steel Tank Institute's *Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems* (R892), revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

4. The piping is constructed of metal without additional corrosion protection measures provided that—

A. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(A)4.A. of this rule for the remaining life of the tank;

5. The following codes may be used to comply with paragraph (1)(B)4. of this rule:

A. National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, **revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org**; and

B. *[National Association of Corrosion Engineers Standard RP-01-69]* **NACE International SP-0169-2007**, *Control of External Corrosion on Submerged Metallic Piping Systems*, **revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org**; or

6. The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1)(B)1.–5. of this rule;

(C) Spill and Overfill Prevention Equipment.

1. Except as provided in paragraph (1)(C)2. of this rule, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

A. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin)**. All delivery hose-fill pipe connections must be tight, lock-on connections**; and

B. Overfill prevention equipment that will—

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;

(II) Alert the operator with a high-level alarm at least one (1) minute before overfilling with an alarm audible in the delivery area; or

*[(II)]***(III)** Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank *[or triggering a high-level alarm]*.

(a) Ball float valves may only be used on tank systems with gravity deliveries, no suction check valves, and no open vapor ports.

(b) Ball float valves are not approved for use in new tank systems installed after December 31, 2011.

[(III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.]

(IV) For pressurized deliveries, overfill prevention equipment must be compatible and approved for use with pressurized deliveries.

2. Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1)(C)1. of this rule if—

A. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)(C)1.A. or B. of this rule; or

B. The UST system is filled by transfers of no more than twenty-five (25) gallons at one time;

(D) All new tank systems installed after December 31, 2011, must be installed with containment sumps at each tank top suction piping or submersible turbine pump connection, each piping transition/ball valve location, and under each dispenser. The containment sumps must be designed to contain any leak from the primary UST piping system; and

*[(D)]***(E)** Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory**,** *[and]* in accordance with *[the]* **all** manufacturer*['s]*s**'** instructions**, and in accordance with 26-2.019**. Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of *[subsection (1)(D) of]* this rule:

1. American Petroleum Institute Publication 1615, *Installation of Underground Petroleum Storage System*, **revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**; or

2. Petroleum Equipment Institute Publication RP100, *Recommended Practices for Installation of Underground Liquid Storage Systems*, **revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.***[; and]*

[(E) Certification of Installation. All owners and operators must ensure that one (1) or more of the following methods of certification, testing or inspection is used to demonstrate compliance with subsection (1)(D) of this rule by providing a certification of compliance on the UST notification form in accordance with 10 CSR 20-10.022:

1. The installer has been certified by the tank and piping manufacturers;

2. The installer has been certified or licensed by the department;

3. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

4. The installation has been inspected and approved by the department;

5. All work listed in the manufacturer's installation checklists has been completed; or

6. The owner and operator have complied with another method for ensuring compliance with subsection (1)(D) of this rule that is determined by the department to be no less protective of human health and the environment.]

*AUTHORITY: sections 319.105[, RSMo Supp. 1989 and 644.041, RSMo 1986] **and 319.107, RSMo 2000 and section 319.137, RSMo Supp. 2010**. This rule originally filed as 10 CSR 20-10.020. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions nine thousand eight

hundred thirty-three dollars ($9,833) annually to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities eighty-eight thousand five hundred dollars ($88,500) annually to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name: 10 CSR 20-10.020 Performance Standards for New Underground Storage Tank Systems
Type of Rulemaking: Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Federal, State, County, City owned or affiliated underground storage tank owners	$ 9,833 (annual)
Missouri Department of Natural Resources	$500 (aggregate)

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires containment sumps be installed with all new underground storage tank systems installed. In addition, ball float valves, or flow restrictors, will no longer be allowed on new underground storage tank systems installed. The following assumptions were used for these calculations:

- During an average one year cycle, underground storage tanks are installed at approximately 50 facilities. During that time frame, though, approximately 10% of those installations were installed at publicly owned facilities. The remaining 90% were installed at privately owned facilities.
- In that year, the facilities had from 1 to 6 tanks installed per facility, with an average of 2 tanks being installed per facility.
- Installation of a containment sump at a tank top and two associated dispensers could cost an estimated minimum $2,500 per tank system during installation. Please note, as with all equipment, more expensive and elaborate options are available. Each system may vary. During the average one year cycle, 2/3 of the new installations installed containment sumps. Only 1/3 of the installs would need to change their installations to include containment sumps to comply with the proposed changes.
- The increased cost of installing a flapper valve, or automatic shutoff valve, instead of a ball float valve, or flow restrictor, may cost $600 per system. Ball float valves were installed in approximately 25% of the newly installed systems.

Total cost for publicly owned/affiliated sites to meet requirements of the amendments to rule 10 CSR 20-10.020:

- 5 new installations x 2 (average number of tanks per installation) x 1/3 of the facilities x $2,500 (containment sump cost) per tank = $8,333 annual cost for compliance with containment sump requirement
- 5 new installations x 2 (average number of tanks per installation) x 25% (percent of sites installing ball float valves) x $600 (additional increased cost for flapper valve instead of ball float valve) = $1,500 cost for compliance with overfill prevention equipment requirement
- Total cost for both requirements = $9,833 annually

A typical new underground storage tank construction can typically range from $1,000,000 to $1,500,000. These are one-time costs at the time of installation only. Therefore, the increased cost for compliance with these requirements is less than 1% of the total construction cost.

Furthermore, containment sumps allow for easy access to the tank top and under-dispenser areas. Thus, future repairs and inspections will be easier and, potentially faster, saving time and money in the future. Furthermore, many sites already install containment sumps and automatic shutoff devices in their new underground storage tank systems. These cost-reducing considerations, though, are not included in the calculation above.

Cost of proposed amendments to rule 10 CSR 20-10.020 to the Department of Natural Resources
The Department of Natural Resources' Hazardous Waste Program already tracks and inspects new installation inspections. Minor, one-time changes to the tracking system may be required, but those costs are estimated to be less than $500.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.020 Performance Standards for New Underground Storage Tank Systems
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of underground storage tank systems • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems	45 installations per year	$88,500 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires containment sumps be installed with all new underground storage tank systems installed. In addition, ball float valves, or flow restrictors, will no longer be allowed on new underground storage tank systems installed. The following assumptions were used for these calculations:

- During a average one year cycle, underground storage tanks are installed at approximately 50 facilities. During that time frame, though, approximately 10% of those installations were installed at publicly owned facilities. The remaining 90% were installed at privately owned facilities.
- In that year, the facilities had from 1 to 6 tanks installed per facility, with an average of 2 tanks being installed per facility.
- Installation of a containment sump at a tank top and two associated dispensers could cost an estimated minimum $2,500 per tank system during installation. Please note, as with all equipment, more expensive and elaborate options are available. Each system may vary. Each system may vary. During the average one year cycle, 2/3 of the new installations installed containment sumps. Only 1/3 of the installs would need to change their installations to include containment sumps to comply with the proposed changes.
- The increased cost of installing a flapper valve, or automatic shutoff valve, instead of a ball float valve, or flow restrictor, may cost $600 per system. Ball float valves were installed in approximately 25% of the newly installed systems.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.020:

- 45 new installations x 2 (average number of tanks per installation) x 1/3 of the facilities x $2,500 (containment sump cost) per tank = $75,000 annual cost for compliance with containment sump requirement
- 45 new installations x 2 (average number of tanks per installation) x 25% (percent of sites installing ball float valves) x $600 (additional increased cost for flapper valve instead of ball float valve) = $13,500 cost for compliance with overfill prevention equipment requirement
- Total cost for both requirements = $88,500 annually

A typical new underground storage tank construction can typically range from $1,000,000 to $1,500,000. These are one-time costs at the time of installation only. Therefore, the increased cost for compliance with these requirements is less than 1% of the total construction cost.

Furthermore, containment sumps allow for easy access to the tank top and under-dispenser areas. Thus, future repairs and inspections will be easier and, potentially faster, saving time and money in the future. Furthermore, many sites already install containment sumps and automatic shutoff devices in their new underground storage tank systems. These cost-reducing considerations, though, are not included in the calculation above.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.021] ***10 CSR 26-2.021*** **Upgrading of Existing Underground Storage Tank Systems**. The commission is moving the rule, deleting section (1), adding new sections (1) and (2), and renumbering and amending the remaining sections.

PURPOSE: The commission proposes to amend the rule for the purpose of eliminating references to the historic December 22, 1998, deadline. In addition, the commission proposes to update referenced documents and include modern standards for testing and evaluating steel tanks to ensure those steel tanks do not leak. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

[(1) Alternatives Allowed. No later than December 22, 1998, all existing underground storage tank (UST) systems must comply with one (1) of the following requirements:

(A) New UST system performance standards in 10 CSR 20-10.020;

(B) The upgrading requirements in sections (2)–(4) of this rule; or

(C) Closure requirements in 10 CSR 20-10.070—10 CSR 20-10.074, including applicable requirements for corrective action in 10 CSR 20-10.060—10 CSR 20-10.067.]

(1) Alternatives Allowed. All underground storage tank (UST) systems which are in-use must comply with one (1) of the following requirements:

(A) New UST system performance standards in 10 CSR 26-2.020; or

(B) The upgrading requirements in sections (3)–(5) of this rule.

(2) Any UST which was not permanently closed by being removed or filled with an inert, solid material before December 22, 1988, and that does not meet the requirements of section (1) shall be permanently closed in accordance with the requirements in 10 CSR 26-2.060 and 10 CSR 26-2.061. If the underground storage tank was taken out of operation by August 28, 1989, but is still in the ground, the person or party responsible for permanently closing the UST is/are the person(s) who owned the UST immediately before the discontinuation of its use.

*[(2)]***(3)** Tank Upgrading Requirements. Steel tanks must be upgraded to meet one (1) of the following requirements in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory:

(A) Interior Lining. A tank may be upgraded by internal lining if—

1. The lining is installed in accordance with the requirements of *[10 CSR 20-10.033]* **10 CSR 26-2.033***[;]* and **the following:**

A. Manufacturer installation requirements;

B. An approved national code or standard, including those listed in section (6) of this rule; and

C. For steel tanks, structural integrity determinations are required and must include actual steel tank thickness readings. Approved integrity test methods are included in section (6) of this rule;

2. Within ten (10) years after **the initial** lining, and every five (5) years after that, **whether relined or not,** the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications; **and**

3. A tank may only be relined and/or the lining may only be repaired, if the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (6) of this rule;

(B) Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of the performance standards for new UST systems in *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(A)2.B.–D. and the integrity of the tank is ensured using one (1) of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system**. Structural integrity evaluations must include steel shell thickness readings and confirmation that the steel shell does not have any holes or perforations. Approved integrity test methods are included in section (6) of this rule**;

2. The tank has been installed for less than ten (10) years and is monitored monthly for releases in accordance with release detection methods *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(D)–(H);

3. The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of release detection method *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(C). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six (3–6) months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (2)(B)1.–3. of this rule; and

(C) Internal Lining Combined With Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if—

1. The lining is installed in accordance with the requirements of *[10 CSR 20-10.033]* **10 CSR 26-2.033**; and

2. The cathodic protection system meets the requirements of *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(A)2.B.–D.

*[(3)]***(4)** Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with *[the ground]* **an electrolyte, including but not limited to soil, backfill, and/or water,** must be cathodically protected in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory and must meet the requirements of *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(B)3.B.–D.

(A) New piping installed at an existing facility must comply with the requirements of 10 CSR 26-2.020.

*[(4)]***(5)** Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(C).

*[(5)]***(6)** The following codes and standards may be used to comply with this rule:

(A) American Petroleum Institute *[Publication]* **Standard** 1631, *[Recommended Practice for the Interior Lining of Existing Steel]* ***Interior Lining and Periodic Inspection of*** *Underground Storage Tanks***, revised 2001. This document is incorporated by**

reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/;

(B) *[The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems]* **NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org**; *[and]*

(C) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems[.]*, **revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/;**

(D) American Society for Testing and Materials G158- 98 (2010) *Standard Guide for Three Methods of Assessing Buried Steel Tanks*, revised 2010, Method B only. Methods A and C may not be used to evaluate the integrity of a steel tank. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9500, www.astm.org; and

(E) National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for inspection of the steel tank integrity. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org.

AUTHORITY: sections 319.105 ***and 319.107****, RSMo [Supp. 1989]* ***2000*** *and [644.026, RSMo Supp. 1993]* ***section 319.137, RSMo Supp. 2010****. This rule originally filed as 10 CSR 20-10.021. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: The department believes that this proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate, because the department believes sites already comply with these modifications.

PRIVATE COST: The department believes that this proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate. The department contacted the three (3) primary companies that conduct this type of work, all of which confirmed their existing procedures already comply with this proposed amendment; as such, the department concluded there would be no increased cost. The department did calculate a private cost of one hundred thirteen thousand forty dollars ($113,040) annually to facilities if this assumption is determined to be erroneous.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.021 Upgrading of Existing Underground Storage Tank Systems
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of underground storage tank systems • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems	Approximately 375 underground storage tanks would require testing every 5 years	The department believes the actual cost is $0. The department did calculate a potential cost if initial assumptions are erroneous $113,040 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment involves older steel tanks which were upgraded more than ten years ago with an interior lining. One concern with interior linings is that, while the inside of the tank may be protected, the steel shell of the tank in contact with the soil may corrode, which can lead to holes in the steel tank, which can compromise the entire tank structure. The proposed change would require an integrity test of the steel tank itself anytime a lining must be repaired or replaced; linings are tested every five years. Please note, the current lining companies verified that they already conduct an integrity assessment prior to re-lining a tank. As such, the department contends that there is no cost associated with this "clarification."

In the interest of full disclosure, the department, though, is providing a calculated cost for compliance assuming that a contractor/owner is not already conducting the required integrity assessment. While this is already required by the most commonly used applicable industry standard, and therefore is likely already an incurred cost, this proposed integrity test requirement potentially costs approximately $1500 per tank.

The following assumptions were used for these calculations:

- 1250 active tanks have interior linings that require inspection.
- Linings must typically be inspected once every five (5) years.
- The average cost for an integrity test is $1,500 per tank.
- An estimated 30 % of all tanks must be repaired to pass inspection and regulatory standards. These 375 are the tanks that would require the integrity test.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- 1256 in use tanks with linings x 30% (linings requiring repair) x $1,500 (cost per assessment) ÷ 5 (adjustment for 5 year inspection cycle to calculate annual cost) = $113,040 annual cost for compliance with integrity test requirements

Three companies conduct the majority of the interior lining and steel tank integrity assessments in Missouri. All three of these companies follow a national standard that already requires integrity assessments prior to repair. As such, the department believes that the calculated potential cost is not the actual anticipated cost.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.022]* *10 CSR 26-2.022* Notification Requirements**. The commission is moving the rule, deleting sections (1), (6), and (11), and amending and renumbering the remaining sections.

PURPOSE: The commission proposes to amend the rule to clarify vague language and allow more flexibility for electronic forms and other alternative submittals. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

[(1) Any owner who intends to install an underground storage tank (UST) system after October 28, 1990, must, at least thirty (30) days before installing the tank, notify the department by letter of the intent to install a UST. The letter must provide the owner's name, the name and location of the facility where the UST will be installed, the date that the installation is expected to commence and the date that the tank is expected to be brought in-use.]

*[(2)]***(1)** Any owner who brings a**n underground storage tank (**UST**)** system *[in-use after September 28, 1990,]* **in operation** must, within thirty (30) days of bringing the tank *[in-use]* **into operation,** register the completed UST system on forms provided by the department. Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out-of-*[operation]***use** on or before January 1, 1974, were required to notify the state in accordance with the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, on a form published by Environmental Protection Agency (EPA) on November 8, 1985 (50 FR 46602), unless notice was given pursuant to section 103(c) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Owners and operators who have not complied with the notification requirements may use forms provided by the department.

*[(3)]***(2)** Notices required to be submitted under section *[(2)]***(1)** of this rule must provide all of the information requested in *[the]* **a** form *[provided]* **approved** by the department for each UST.

*[(4)]***(3)** All owners and operators of new UST systems must certify in *[the notification form]* **writing** compliance with the following requirements:

(A) Installation of tanks and piping in *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(E);

(B) Cathodic protection of steel tanks and piping under *[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(A) and (B);

(C) Financial responsibility in *[10 CSR 20-11.090 through 10 CSR 20-11.112]* **10 CSR 26-3.090–10 CSR 26-3.112**; and

(D) Release detection in *[10 CSR 20-10.041]* **10 CSR 26-2.041** and *[10 CSR 20-10.042]* **10 CSR 26-2.042**.

*[(5)]***(4)** *[An owner/operator shall complete and file an updated registration form if the owner information or information regarding tank equipment and operation, as reported on the current registration with the department, changes.]* **If the owner changes, the new owner or operator shall complete and file an updated registration form with the department within thirty (30) days of the change(s).**

[(6) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in 10 CSR 20-10.020(1)(D).]

*[(7)]***(5)** The department shall issue a Certificate of Registration for any tanks which meet the requirements in sections (1) through *[(5)]***(4)** of this rule and *[10 CSR 20-10.020]* **10 CSR 26-2.020** and *[10 CSR 20-10.021]* **10 CSR 26-2.021**. The Certificate of Registration shall be valid for five (5) years except as described in section *[(8)]***(6)** of this rule.

*[(8)]***(6)** The department shall establish effective dates and expiration dates for Certificates of Registration issued under this rule. These dates shall establish a period of from one to five (1–5) years for an initial Certificate of Registration and a period of five (5) years for subsequent Certificates of Registration.

*[(9)]***(7)** Information submitted to the department after January 1, 1990, under sections (1) through *[(6)]***(4)** of this rule for a tank brought into use before January 1, 1990, or for a tank brought into use after September 28, 1990, is an application for a Certificate of Registration and shall be accompanied by a fee as described in section *[(10)]***(8)***[, except as described in section (11)]*.

*[(10)]***(8)** Fees required under section *[(9)]***(7)** of this rule shall be paid in one (1) payment of seventy-five dollars ($75). No fees shall be collected for registration of tanks which were permanently closed prior to August 28, 1989. No further fees shall be assessed upon registered USTs once permanent closure has been completed and any fees to date have been paid.

[(11) The department may waive part of the thirty (30)-day prior notice required in section (1) for reasons including, but not limited to, weather, contractual arrangements, department inspection scheduling and availability of tank service vendors. A request for a waiver must accompany the information required under section (1) of this rule.]

*AUTHORITY: sections 319.103, **319.105, 319.107, 319.111, 319.114,** and 319.123, RSMo [1994] **2000** and **section** 319.137, RSMo Supp. [1998] **2010**. This rule originally filed as 10 CSR 20-10.022. Original rule filed April 2, 1990, effective Sept. 28, 1990. For intervening history, please consult the **Code of State Regulations**. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please

direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.030] 10 CSR 26-2.030* Spill and Overfill Control**. The commission is moving the rule and amending sections (2) and (3).

PURPOSE: The commission proposes to amend the rule to update referenced documents. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(2) The owner and operator must report, investigate**,** and clean up any spills and overfills in accordance with *[10 CSR 20-10.053]* **10 CSR 26-2.053**.

(3) Guidance on spill and overfill prevention appears in the—

(A) American Petroleum Institute Publication 1621, *Recommended Practice for Bulk Liquid Stock Control at Retail Outlets***, revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards**/; and

(B) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code***, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org**.

AUTHORITY: sections 319.105[,] and 319.107, RSMo 2000 and section 319.137, RSMo Supp. [1989] 2010 [and 644.041, RSMo 1986]. This rule originally filed as 10 CSR 20-10.030. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.031] 10 CSR 26-2.031* Operation and Maintenance of Corrosion Protection**. The commission is moving the rule, amending sections (1) and (2), and adding sections (3) and (4).

PURPOSE: The commission proposes to amend the rule to update referenced documents and include modern standards for testing and evaluating steel tanks to ensure those steel tanks do not leak. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) All owners and operators of steel underground storage tank (UST) systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.

(A) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with *[the ground]* **an electrolyte, including but not limited to soil, backfill, and/or water**.

(B) All UST systems equipped with cathodic protection systems must be inspected for proper operation by *[a qualified]* **either a NACE International certified or a Steel Tank Institute certified** cathodic protection tester in accordance with the following requirements:

1. Frequency. **To confirm that the system is operating properly and providing adequate protection,** *[A]***a**ll cathodic protection systems must be tested within six (6) months of installation and at least *[every three (3) years]* **triennially** after that**,** or according to another reasonable time frame established by the department; and

2. Inspection criteria. The criteria that are used to determine that cathodic protection (CP) is adequate as required by this section must be in accordance with a code of practice developed by a nationally**-**recognized association listed in section (2) of this rule.

A. Inspection reports must document the testing method used, the testing standard referenced, the CP tester, and the CP

tester's qualifications.

B. Inspection reports must include a site sketch, potential readings, and the location where the readings were made.

C. For impressed current systems, the inspection report must document continuity data and how voltage (IR) drops other than those across the structure/electrolyte interface were considered or accounted for in determining adequate protection.

(C) UST systems with impressed current cathodic protection systems must also be inspected every sixty (60) days to ensure the equipment is running properly*[; and]***.**

1. Rectifier log reports must include relevant system data, including but not limited to amperage readings, voltage readings, hour meter, and indicator light, where available.

2. Any indication of deviations from previous rectifier logs or rectifier readings or the most recent cathodic protection system inspection of the rectifier or cathodic protection system, such as variances in current reading or indicator light, must be appropriately investigated.

(D) For UST systems using cathodic protection, records of the operation of the cathodic protection **system** must be maintained (in accordance with *[10 CSR 20-10.034]* **10 CSR 26-2.034**) to demonstrate compliance with the performance standards in this rule. These records must provide the following:

1. The results of the last three (3) inspections required in subsection (1)(C) of this rule; and

2. The results of testing from the last two (2) inspections required in subsection (1)(B) of this rule.

(2) *[The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems may be used to comply with paragraph (1)(B)2. of this rule.]* **The following codes and standards may be used to comply with this rule:**

(A) NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; or

(B) Steel Tank Institute Cathodic Protection Testing Procedures for sti-P3 UST's, R051, January 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; or

(C) Steel Tank Institute Recommended Practice for the Addition of Supplemental Anodes to sti-P3 USTs, R972, December 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com.

(3) If cathodic protection is being used to protect all or part of a UST system from corrosion, and the electric system energizing the cathodic protection has been off, unhooked, or damaged for more than ninety (90) days, the owner/operator must—

(A) Conduct an integrity test, documenting adequate tank shell integrity and thickness, as required in 10 CSR 26-2.021(2)(B); and

(B) Have a corrosion expert or design engineer re-evaluate the UST system, cathodic protection system, and surrounding structures and design and/or make changes to the existing cathodic protection system to meet the standards in 10 CSR 26-2.020(1)(A)2.B.–D.

(C) The owner/operator may request an additional ninety (90) days to repair the systems by submitting a request, including the justification for the extension; or

(D) Permanently close the tank, in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064.

(4) If a cathodic protection system test indicates that the system is not operating properly or does not provide adequate protection, as defined by the testing method used, and the system is not repaired within ninety (90) days, or if a required cathodic protection system test is not conducted, the owner/operator must comply with the requirements outlined in section (3) of this rule.

AUTHORITY: sections 319.105 ***and 319.107****, RSMo* ***2000 and section 319.137, RSMo*** *Supp.* ***2010*** *[1989 and 644.041, RSMo 1986]. This rule originally filed as 10 CSR 20-10.031. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.032] ***10 CSR 26-2.032*** **Compatibility**. The commission is moving the rule and amending the rule purpose and sections (1) and (2).

PURPOSE: The commission proposes to amend the rule to update referenced documents and clarify vague language. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PURPOSE: This rule prevents releases caused by chemical action on the underground storage tank system by the stored [product] ***regulated substance****.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be

made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Owners and operators must use an underground storage tank (UST) system made of or lined with materials that are compatible with the substance stored in the UST system. **If a lining is installed for compatibility purposes, it must be maintained and inspected in accordance with 10 CSR 26-2.021(3)(A).**

(2) Owners and operators storing alcohol blends may use the following codes to comply with *[the requirements of]* this *[section]* **rule**:

(A) American Petroleum Institute Publication 1626, *Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations*, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**; *[and]* **or**

(B) American Petroleum Institute Publication 1627, *Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations*, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or**

(C) Other standards or publications approved by the department.

*AUTHORITY: section[s] 319.105, **RSMo 2000 and section 319.137,** RSMo Supp. [1989] **2010** [and 644.041, RSMo 1986]. This rule originally filed as 10 CSR 20-10.032. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.033] ***10 CSR 26-2.033*** **Repairs Allowed**. The commission is moving the rule and amending section (2).

PURPOSE: The commission proposes to amend the rule to update referenced documents, clarify vague language, and include references to related rules. The commission proposes to amend how metal piping may be repaired, specifically that steel piping repairs do not lead to accelerated corrosion. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(2) The repairs must meet the following requirements:

(A) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally-recognized association or an independent testing laboratory.

1. The following codes and standards may be used to comply with subsection (2)(A) of this rule:

A. National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, **revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org**;

B. American Petroleum Institute Publication 2200, *Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines*, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**;

C. American Petroleum Institute *[Publication]* **Standard** 1631, *[Recommended Practice for the Interior Lining of Existing Steel]* ***Interior Lining and Periodic Inspection of Underground Storage Tanks***, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/**; and

D. National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, **revised 1999**. **This standard may only be used for interior lining application and inspection, not for integrity testing of the steel shell. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org**;

(C) Metal pipe sections and fittings that have released *[product]* **a regulated substance** as a result of corrosion or other damage must be replaced. **For cathodically protected metal piping, the entire length of electrically-continuous metal pipe must be replaced.** Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications;

(D) Repairs must be done by a person who is properly registered with the Missouri Department of Agriculture and who has a financial responsibility mechanism that complies with the requirements of 2 CSR 90-30.085;

*[(D)]***(E)** Repaired tanks and piping must be tightness tested in accordance with release detection methods *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(C) and *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(B) within thirty (30) days following the date of the completion of the repair, except as provided in the following paragraphs*[—]***:

1. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally-recognized association or an independent testing laboratory;

2. The repaired portion of the UST system is monitored monthly for releases by one (1) of the release detection methods in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(D)–(H); or

3. Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed in paragraphs *[(2)(D)1. and 2.]* **(2)(E)1. and 2.**;

*[(E)]***(F)** Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system must be tested with the methods for operation and maintenance of corrosion protection in *[10 CSR 20-10.031]***10 CSR 26-2.031**(1)(B) and (C) to ensure that it is operating properly**. Repair may include, but is not limited to, adjustments, maintenance, replacement, or changes to cathodic protection equipment and/or tank repairs**; *[and]*

(G) If a tank is repaired by installation of an interior lining, the lining must be properly maintained and inspected, in accordance with 10 CSR 26-2.021(2)(A), for the life of the tank; and

*[(F)]***(H)** UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

*AUTHORITY: sections 319.105[,] **and 319.107, RSMo 2000 and section 319.137,** RSMo Supp. [1989] **2010** [and 644.041, RSMo 1986]. This rule originally filed as 10 CSR 20-10.033. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions one thousand dollars ($1,000) annually to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities nine thousand dollars ($9,000) annually to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:
10 CSR 20-10.033 Repairs Allowed
Type of Rulemaking:
Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Federal, State, County, City owned or affiliated underground storage tank owners	$1,000 (annual)
Missouri Department of Natural Resources	$0

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment outlines requirements for replacing steel piping that has leaked. The proposed change would require the piping to be completely replaced, not just the section that leaked. Most owners already recognize that if a section of steel pipe has corroded (the most common reason for a leaking steel piping) that the integrity of all of the steel piping may have been compromised. As such, in these rare occurrences of steel piping failure, many owners are already replacing the entire run of piping.

The following assumptions were used for these calculations:

- For the purposes of this fiscal note, the department assumed only one steel piping failure resulting in a leak per year.
- Contractors indicated that the cost increase for replacing the entire run of piping instead of just replacing the section would be at least $10,000.
- Even though many owners already replace the entire run of piping instead of just the compromised section, the department did not take that reduction into account in this calculation.
- An estimated 90% of tank sites are owned by private entities. An estimated 10% of tank sites are owned by federal, state, county, city and other local government entities.

Total cost for public sites to meet requirements of the amendments to rule 10 CSR 20-10.033:

- 1 (repair per year) x $10,000 (cost increase per repair) x 10% (publicly owned portion)= $9,000 annual cost for compliance with proposed repair requirements

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources
The Department of Natural Resources' Hazardous Waste Program already reviews and inspects system repairs. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.033 Repairs Allowed
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of out of use underground storage tank systems • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems	Approximately one facility with a qualifying repair per year	$9,000 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment outlines requirements for replacing steel piping that has leaked. The proposed change would require the piping to be completely replaced, not just the section that leaked. Most owners already recognize that if a section of steel pipe has corroded (the most common reason for a leaking steel piping) that the integrity of all of the steel piping may have been compromised. As such, in these rare occurrences of steel piping failure, many owners are already replacing the entire run of piping.

The following assumptions were used for these calculations:

- For the purposes of this fiscal note, the department assumed only one steel piping failure resulting in a leak per year.
- Contractors indicated that the cost increase for replacing the entire run of piping instead of just replacing the section would be at least $10,000.
- Even though many owners already replace the entire run of piping instead of just the compromised section, the department did not take that reduction into account in this calculation.
- An estimated 90% of tank sites are owned by private entities. An estimated 10% of tank sites are owned by federal, state, county, city and other local government entities.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.033:

- 1 (repair per year) x $10,000 (cost increase per repair) x 90% (privately owned portion)= $9,000 annual cost for compliance with proposed repair requirements

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.034] 10 CSR 26-2.034 **Reporting and Record *[k]*Keeping**. The commission is moving the rule and amending the rule title and section (1).

PURPOSE: The commission proposes to amend the rule to clarify vague language and allow more flexibility for electronic forms and other alternative submittals. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

(1) Owners and operators of underground storage tank (UST) systems must cooperate fully with inspections, monitoring**,** and testing conducted by the department, **or the department's authorized representative,** as well as requests for document submission, testing**,** and monitoring by the owner or operator.

(A) Reporting. Owners and operators must submit the following information to the department:

1. Notification for all UST systems by the notification requirements in *[10 CSR 20-10.022]* **10 CSR 26-2.022**;

2. Reports of all releases including suspected releases (*[10 CSR 20-10.050]* **10 CSR 26-2.050**), spills and overfills (*[10 CSR 20-10.053]* **10 CSR 26-2.053**)**,** and confirmed releases (*[10 CSR 20-10.061]* **10 CSR 26-2.071**);

3. Corrective actions planned or taken including initial abatement measures (*[10 CSR 20-10.062]* **10 CSR 26-2.072**), initial site characterization (*[10 CSR 20-10.063]* **10 CSR 26-2.074**), free product removal (*[10 CSR 20-10.064]* **10 CSR 26-2.075**), investigation of soil and groundwater cleanup (*[10 CSR 20-10.065]* **10 CSR 26-2.078),** and corrective action plan (*[10 CSR 20-10.066]* **10 CSR 26-2.082**); and

4. A notification before permanent closure or change in service (*[10 CSR 20-10.071]* **10 CSR 26-2.061**).

(B) *[Recordkeeping]* **Record Keeping**. Owners and operators must maintain the following information:

1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (*[10 CSR 20-10.020]***10 CSR 26-2.020**(1)(A)4. and **(1)**(B)4.);

2. Documentation of operation of corrosion protection equipment (*[10 CSR 20-10.031]* **10 CSR 26-2.031**);

3. Documentation of UST system repairs (*[10 CSR 20-10.033]***10 CSR 26-2.033**(2)(F));

4. Recent compliance with release detection requirements (*[10 CSR 20-10.045]* **10 CSR 26-2.045**); and

5. Results of the site investigation conducted at permanent closure (*[10 CSR 20-10.074]* **10 CSR 26-2.064**).

(C) Availability and Maintenance of Records. Owners and operators must keep the records required either—

1. At the UST site and immediately available for inspection by the department; or

2. At a readily available alternative site and be provided for inspection to the department within three (3) working days or five (5) calendar days upon receipt of a written request. A written request shall be made in the following manner:

A. The department shall provide a written request at the time of inspection to site personnel; or

B. In the cases of unattended sites or inspections conducted after normal business hours *[(8:00 a.m. to 5:00 p.m., local time, Monday through Friday)]*, written notice shall be made by certified mail; or

3. If the owner or operator fails to meet the requirements of paragraph (1)(C)2., the department may order or otherwise require that owner or operator to maintain records on-site per paragraph (1)(C)1.; or

4. In the case of permanent closure records required under *[10 CSR 20-10.074]* **10 CSR 26-2.064**, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated in this section.

[DEPARTMENT OF NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL PROGRAM

file:_____County
UT_____

REQUEST FOR RECORDS
UNDERGROUND STORAGE TANK
INSPECTION

Date:_____
Time:_____
Pursuant to 10 CSR 20-10.034(1)(C)2. the Department of Natural Resources requests the records concerning the underground storage tanks facility located at:

Facility name:_____

Facility address:_____
be provided to Missouri Department of Natural Resources
_____Office

Mailing address:_____
Street address:_____
_____
(City) (State) (Zip Code)
within three (3) working days or five (5) calendar days of this notice.
This request was made on _____

_____
(Date & Time)
by:_____
(Inspector name)
_____
(Inspector office)
_____
(Inspector phone)

and was given to:

_____
(Site person name)

Signed:

_____
(Inspector)]

AUTHORITY: sections 319.107[,] ***and 319.111, RSMo 2000 and section 319.137,*** *RSMo Supp. [1989]* ***2010*** *[and 644.021, RSMo 1986]. This rule originally filed as 10 CSR 20-10.034. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.040] ***10 CSR 26-2.040*** **General Requirements for Release Detection for All Underground Storage Tank Systems**. The commission is moving the rule, amending sections (1) and (2), and deleting sections (3) and (4).

PURPOSE: The commission proposes to amend the rule for the purpose of eliminating references to the historic deadlines in sections (3) and (4) and clarifying vague language. In addition, the commission proposes to include a reference to the national work group that specifically certifies release detection methods. The commission is moving the rule to 10 CSR 26-2 and updating citations in the authority section.

(1) Owners and operators of *[new and existing]* underground storage tank (UST) systems **that are in use** must *[provide]* **use** a method, or combination of methods, of release detection that—

(A) Can detect a release from any portion of the tank and the connected underground piping that routinely contains *[product]* **a regulated substance, except remote fills and gravity piping**;

(B) Is installed, calibrated, operated**,** and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(C) Meets the performance requirements for tanks in *[10 CSR 20-10.043]* **10 CSR 26-2.043** or for piping in *[10 CSR 20-10.044]* **10 CSR 26-2.044**, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, **all release detection** methods *[used after December 22, 1990, except for methods permanently installed prior to that date,]* must be capable of detecting the leak rate or quantity specified for that tank method in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(B)–(D) or piping method in *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(A) and (B) with a probability of detection of ninety-five percent (95%) and a probability of false alarm of five percent (5%).

(D) All release detection methods and equipment must be conducted and operated in accordance with the applicable National Work Group on Leak Detection Evaluations (NWGLDE) certification, unless otherwise approved by the department. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org.

(2) When a release detection method for tanks in *[10 CSR 20-10.043]* **10 CSR 26-2.043** or for piping in *[10 CSR 20-10.044]* **10 CSR 26-2.044** indicates a release may have occurred, owners and operators must notify the department in accordance with *[10 CSR 20-10.050–10 CSR 20-10.053]* **10 CSR 26-2.050–10 CSR 26-2.053**.

[(3) Owners and operators of all UST systems must comply with the release detection requirements of 10 CSR 20-10.040—10 CSR 20-10.045 by the following dates based on the year of installation:

(A) December 22, 1990 for all existing pressurized piping;

(B) September 28, 1990 for USTs installed before 1965, or of unknown age;

(C) December 22, 1990 for USTs installed during 1965–1969;

(D) December 22, 1991 for USTs installed during 1970–1974;

(E) December 22, 1992 for USTs installed during 1975–1979;

(F) December 22, 1993 for USTs installed during 1980–September 28, 1990; and

(G) Immediately upon installation for any USTs installed after September 28, 1990.

(4) Any existing UST system that cannot apply a method of release detection that complies with the requirements of 10 CSR 20-10.040–10 CSR 20-10.045 must complete the closure procedures in 10 CSR 20-10.070–10 CSR 20-10.074 by the date on which release detection is required for that UST system under section (3) of this rule.]

AUTHORITY: sections ***319.105,*** *319.107****, and 319.111, RSMo 2000 and section 319.137, RSMo*** *Supp. [1989]* ***2010*** *[and 644.026, RSMo Supp. 1993]. This rule originally filed as 10 CSR 20-10.040. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous

Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.041] ***10 CSR 26-2.041*** **Requirements for Petroleum Underground Storage Tank Systems**. The commission is moving the rule, amending section (1), and adding section (2).

PURPOSE: The commission proposes to amend the rule for the purpose of eliminating references to the historic December 22, 1998, deadline and clarify vague language. In addition, the commission proposes to require that high-throughput facilities use appropriate release detection methods, ensuring that the systems are adequately being monitored for leaks. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section.

(1) Owners and operators of petroleum underground storage tanks (UST) systems **that are in use** must provide release detection for tanks and piping as follows:

(A) Tanks. Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(D)–(H)**,** except that—

1. UST systems that meet new or upgraded standards in *[10 CSR 20-10.020]* **10 CSR 26-2.020** or *[10 CSR 20-10.021]* **10 CSR 26-2.021** and the monthly inventory control requirements in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(A) or (B) may use tank tightness testing (*[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(C)) at least every five (5) years until December 22, 1998**,** or until ten (10) years after the tank is installed or upgraded under *[10 CSR 20-10.021]***10 CSR 26-2.021**(2), whichever is later;

[2. UST systems that do not meet the performance standards in 10 CSR 20-10.020 or 10 CSR 20-10.021 may use monthly inventory controls (10 CSR 20-10.043(1)(A) or (B)) and annual tank tightness testing (10 CSR 20-10.043(1)(C)) until December 22, 1998, when the tank must be upgraded under 10 CSR 20-10.021 or permanently closed under 20-10.071; and]

*[3.]***2.** Tanks with capacity of five hundred fifty (550) gallons or less may use manual tank gauging (*[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(B)); and

(B) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

1. Pressurized piping. Underground piping that conveys regulated substances under pressure must—

A. Be equipped with an automatic line leak detector in *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(A); and

B. Have an annual line tightness test conducted in accordance with *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(B) or have monthly monitoring conducted in accordance with *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(C); and

2. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years and in accordance with *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(B) or use a monthly monitoring method conducted in accordance with *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(C). No release detection is required for suction piping that is designed and constructed to meet the following standards:

A. The below-grade piping operates at less than atmospheric pressure;

B. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

C. Only one (1) check valve is included in each suction line;

D. The check valve is located directly below and as close as practical to the suction pump; and

E. A method is provided that allows compliance with subparagraphs (1)(B)2.A.–D. of this rule to be readily determined (for example, the check valve can be visually inspected)*[.]***; and**

3. Gravity piping and remote fill piping are exempt from the piping line leak detection requirements in this section.

(2) High-throughput facilities. In addition to the requirements outlined in section (1) of this rule, any owner of a tank or a multi-tank connected or manifolded system that dispenses more than five hundred thousand (500,000) gallons of any regulated substance in one (1) calendar month must use at least one (1) of the following tank system release detection methods:

(A) Interstitial monitoring for both tank and piping systems, in accordance with 10 CSR 26-2.043(1)(H), at least once every fifteen (15) days; or

(B) Vapor monitoring, including introduced chemical marker monitoring, approved by the National Work Group for Leak Detection Evaluations (NWGLDE) for the substance stored at least once every fifteen (15) days. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org; or

(C) Continuous in-tank release detection, which must include continual reconciliation of tank system inventory. Standard statistical inventory control is not acceptable. The method used must meet criteria established by the National Work Group for Leak Detection Evaluations (NWGLDE) for continuous in-tank leak detection methods. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org; or

(D) Another method approved by the department specifically for high-throughput UST systems.

AUTHORITY: sections ***319.105 and*** *319.107,* ***RSMo 2000 and section 319.137,*** *RSMo Supp. [1989]* ***2010*** *[and 644.026, RSMo Supp. 1993]. This rule originally filed as 10 CSR 20-10.041. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment is expected to cost private entities sixty thousand five hundred dollars ($60,500) annually to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or

email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.041 Requirements for Petroleum Underground Storage Tank Systems
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of high throughput underground storage tank systems • High volume retail automotive fueling stations • Truck stops • Fleet operations • Other owners and operators of underground storage tank systems		$60,500 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment would change the monitoring requirements for high throughput facilities. Many facilities, like truck stops and trucking locations, have tank systems that rarely, if ever, stop running. While the regulations establish approved methods for checking a tank system monthly for leaks, many of these methods are not adequate for these facilities. As such, the department is proposing to to require these facilities to use a leak detection method that is appropriate for facilities that have high throughputs. While many of these facilities already use an appropriate method, for the remaining facilities, the least expensive way to comply with this proposed new requirement would cost approximately $25 per month per tank.

The following assumptions were used for these calculations:

- At least 75 active facilities report themselves as "travel centers" or "truck stops." Per our inspection reports, there are approximately 35 facilities with 16 dispensers or more, likely indicating high throughput. For this calculation, we will use the higher estimate of high throughput facilities (75).
- We are estimating an average three tanks would qualify as high throughput at each.
- Upgrade of an existing monitoring system to a continuous monitoring system would require a $25 per month per tank service contract.
- Many truck stops already use the continuous monitoring method or are conducting interstitial monitoring, another method for complying with the proposed amendment.
- For this calculation, we assumed all included systems (5% of the total tank facility population), though, would require an upgrade.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.041:

- 75 high through put facilities x 3 tanks per facility x $300 (annual monitoring cost) = $60,500 total annual cost for compliance with additional monitoring requirements

Three companies conduct the majority of the interior lining and steel tank integrity assessments in Missouri. All three of these companies follow a national standard that already requires integrity assessments prior to repair. As such, the department believes that the calculated potential cost is not the actual anticipated cost.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.042] ***10 CSR 26-2.042*** **Requirements for Hazardous Substance Underground Storage Tank Systems**. The commission is moving the rule, amending section (1), and deleting the current section (2).

PURPOSE: The commission proposes to amend the rule for the purpose of eliminating references to the historic December 22, 1998, deadline and to clarify vague language. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

(1) Owners and operators of **in-use** hazardous substance underground storage tank (UST) systems must *[provide]* **use a** release detection **method** that meets the *[following]* requirements*[:]* **of 10 CSR 26-2.041.**

[(A) Release detection at existing UST systems must meet the requirements for petroleum UST systems in 10 CSR 20-10.041. By December 22, 1998, all hazardous substance UST systems must meet the release detection requirements for new systems in subsection (1)(B) of this rule;

(B) Release detection at new hazardous substance UST systems must meet the following requirements:]

(2) In addition, all in-use hazardous substance USTs must meet the following requirements:

*[1.]***(A)** Secondary containment systems must be designed, constructed**,** and installed to—

*[A.]***1.** Contain regulated substances released from the tank system until they are detected and removed;

*[B.]***2.** Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

*[C.]***3.** Be checked for evidence of a release at least every thirty (30) days;

*[2.]***(B)** Double-walled tanks must be designed, constructed**,** and installed to—

*[A.]***1.** Contain a release from any portion of the inner tank within the outer wall; and

*[B.]***2.** Detect the failure of the inner wall;

*[3.]***(C)** External liners (including vaults) must be designed, constructed**,** and installed to—

*[A.]***1.** Contain one hundred percent (100%) of the capacity of the largest tank within its boundary;

*[B.]***2.** Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

*[C.]***3.** Surround the tank completely (that is, it is capable of preventing lateral as well as vertical migration of regulated substances);

*[4.]***(D)** Underground piping must be equipped with secondary containment that satisfies the requirements of *[paragraph (1)(B)1.]* **subsection (2)(A)** of this rule (for example, trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(A); and

*[5.]***(E)** Other methods of release detection may be used if owners and operators—

*[A.]***1.** Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(B)–(H) can detect a release of petroleum;

*[B.]***2.** Provide information to the department on effective corrective action technologies, health risks**,** and chemical and physical properties of the stored substance and the characteristics of the UST site; and

*[C.]***3.** Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

[(2) The provisions of 10 CSR 25-7.265(2)(J) may be used to comply with this rule.]

AUTHORITY: sections ***319.105 and*** *319.107,* ***RSMo 2000 and section 319.137,*** *RSMo Supp. [1989]* ***2010*** *[and 644.026, RSMo Supp. 1993]. This rule originally filed as 10 CSR 20-10.042. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.043] ***10 CSR 26-2.043*** **Methods of Release Detection for Tanks**. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to include references to the national work group that certifies release detection methods. In addition, the commission is proposing changes to clarify vague language and include more relevant, modern release detection methods. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

(1) *[Each method]* **Methods** of release detection for underground storage tanks (USTs) used to meet the requirements *[of petroleum UST leak detection]* in *[10 CSR 20-10.041]* **10 CSR 26-2.041** must *[meet the following]* **be conducted as follows**:

(A) Inventory Control. *[Product]* **Regulated substance** inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent (1%) of flow through plus one hundred thirty (130) gallons on a monthly basis in the following manner:

1. Inventory volume measurements for regulated substance inputs, withdrawals**,** and the amount still remaining in the tank are recorded each operating day on forms provided by the department or on forms previously approved by the department;

2. The equipment used is capable of measuring the level of *[product]* **regulated substance** over the full range of the tank's height to the nearest one-eighth inch (1/8");

3. The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

4. Deliveries are made through a drop tube that extends to within one foot (1') of the tank bottom;

5. Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of product withdrawn;

6. The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month; and

7. The practices described in the American Petroleum Institute Publication 1621, *Recommended Practice for Bulk Liquid Stock Control at Retail Outlets*, **revised 2001**, may be used, where applicable, as guidance in meeting the requirements of this subsection;

(B) Statistical Inventory Reconciliation (SIR), which is a statistical inventory analysis method that tests for the loss of a regulated substance. SIR must meet the following requirements:

1. Be able to detect a two-tenths (0.2) gallon per hour leak rate from any portion of the tank system that routinely contains a regulated substance;

2. Must be conducted for each independent tank system;

3. Be done in conjunction with inventory control that meets the requirements in 10 CSR 26-2.043(1)(A); and

4. Be conducted in accordance with the National Work Group on Leak Detection Evaluations certification and the manufacturer's requirements. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org;

5. Owners and operators must maintain all supporting data, including regulated substance and water stick readings, for at least twelve (12) months.

6. The SIR analysis report must be completed and sent to the owner or operator within fifteen (15) days of the end of each calendar month;

*[(B)]***(C)** Manual Tank Gauging. Manual tank gauging must meet the following requirements:

1. Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;

2. Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the period;

3. The equipment used is capable of measuring the level of *[product]* **regulated substance** over the full range of the tank's height to the nearest one-eighth inch (1/8");

4. A leak is suspected and subject to the requirements of *[10 CSR 20-10.050–10 CSR 20-10.053]* **10 CSR 26-2.050–10 CSR 26-2.053** if the variation between beginning and ending measurements exceeds the following weekly or monthly standards:

A. Tanks of five hundred fifty (550)-gallon capacity or less are allowed a weekly standard of ten (10) gallons per reading and a monthly average of five (5) gallons per reading;

B. Five hundred fifty-one to one thousand (551–1000)-gallon capacity tanks are allowed a difference of thirteen (13) gallons per week and a monthly average of seven (7) gallons;

C. One thousand one to two thousand (1001–2000)-gallon capacity tanks are allowed a difference of twenty-six (26) gallons per week and a monthly average of thirteen (13) gallons;

D. Five hundred fifty-one to one thousand (551–1000)-gallon capacity tanks with dimensions no greater than sixty-four inches by seventy-three inches (64" × 73") are allowed a difference of none (9) gallons per week and monthly average of four (4) gallons, provided that a period of at least forty-four (44) hours during which no liquid is added to or removed from the tank is allowed to pass between tank liquid level measurements; and

E. One thousand (1000)-gallon capacity tanks with dimensions of forty-eight inches by one hundred twenty-eight inches (48" × 128") are allowed a difference of twelve (12) gallons per week and a monthly average of six (6) gallons, provided that a period of at least fifty-eight (58) hours during which no liquid is added to or removed from the tank is allowed to pass between tank liquid level measurements; and

5. Use of manual tank gauging must comply with the following size restrictions:

A. Tanks of five hundred fifty (550) gallons or less nominal capacity may use this as the sole method of release detection;

B. Tanks of five hundred fifty-one to one thousand (551–1000)-gallon capacity with dimensions no greater than sixty-four inches by seventy-three inches (64" × 73") and tanks of one thousand (1000)-gallon capacity with dimensions of forty-eight inches by one hundred twenty-eight inches (48" × 128") may use this as the sole method of release detection;

C. Tanks of five hundred fifty-one to two thousand (551–2000) gallons may use the method in place of inventory control in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(A); and

D. Tanks of greater than two thousand (2000) gallons nominal capacity may not use this method for release detection;

*[(C)]***(D)** Tank Tightness Testing. Tank tightness testing (or similar test) must be capable of detecting a one-tenth (0.1)-gallon-per-hour leak rate from any portion of the tank that routinely contains *[product]* **regulated substance** while accounting for the effects of thermal expansion or contraction of the *[product]* **regulated substance**, vapor pockets, tank deformation, evaporation or condensation**,** and the location of the water table;

*[(D)]***(E)** Automatic Tank Gauging. Equipment for automatic tank gauging that tests for the loss of *[product]* **regulated substance** and conducts inventory control must meet the following requirements:

1. The automatic *[product]* **regulated substance** level monitor test can detect a two-tenths (0.2)-gallon-per-hour leak rate from any portion of the tank that routinely contains *[product]* **a regulated substance**; and

2. Inventory control (or equivalent test) meeting the requirements in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(A) is conducted;

*[(E)]***(F)** Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

1. The materials used as backfill are sufficiently porous and permeable (for example, gravel, sand**,** or crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

2. The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (for example, gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

3. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall**,** or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;

4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component(s) of that substance**,** or a tracer compound placed in the tank system;

6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (1)(E)1.–4. of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains *[product]* **a regulated substance**; and

7. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

*[(F)]***(G)** Groundwater Monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

1. The regulated substance stored is immiscible in water and has a specific gravity of less than one (1);

2. The groundwater is within twenty feet (20') from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is at least one hundredth centimeter per second (0.01 cm/sec) (for example, the soil should consist of gravels, coarse to medium sands, coarse silts**,** or other permeable materials);

3. The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

4. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

5. Monitoring wells or devices shall intercept the excavation zone or are as close to it as is technically feasible;

6. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth inch (1/8") of free product on top of the groundwater in the monitoring wells;

7. The site is assessed within and immediately below the UST system excavation zone to ensure compliance with the requirements in paragraphs (1)(F)1.–5. of this rule. The site assessment also establishes the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains *[product]* **a regulated substance**; and

8. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

*[(G)]***(H)** Interstitial Monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed**,** and installed to detect a leak from any portion of the tank that routinely contains *[product]* **a regulated substance** and also meets one (1) of the following requirements:

1. For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains *[product]* **a regulated substance**;

2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier.

A. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (less than one millionth centimeter per second (10^{-6} cm/sec) for the regulated substance stored) to direct a release to the monitoring point and permit its detection.

B. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

C. For cathodically protected tanks the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.

D. The groundwater, soil moisture**,** or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days.

E. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five (25)-year flood plain, unless the barrier and monitoring designs are for use under these conditions.

F. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner is compatible with the substance stored; and

4. The provisions outlined in the Steel Tank Institute's *Standard for Dual Wall Underground Storage Tanks* may be used as guidance for aspects of the design and construction of underground steel double-walled tanks; and

*[(H)]***(I)** Other Methods. Any other type of release detection method, or combination of methods, can be used if—

1. It can detect a two-tenths (0.2)-gallon-per- hour leak rate or a release of one hundred fifty (150) gallons within a month with a probability of detection of ninety-five percent (95%) and a probability of false alarm of five percent (5%); or

2. The department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subsections (1)(C)–(H) of this rule. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

AUTHORITY: sections ***319.105 and*** *319.107,* ***RSMo 2000 and section 319.137****, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.043. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.044] ***10 CSR 26-2.044*** **Methods of Release Detection for Piping**. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to include references to the national work group that certifies release detection methods, clarify vague language, and include more defined test procedures and report requirements. In addition, the commission is proposing an alternative option for compliance with this rule for tanks used solely to store fuel for emergency generators. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

(1) Each method of release detection for piping used to meet the requirements of release detection for underground storage tanks (USTs) in *[10 CSR 20-10.041]* **10 CSR 26-2.041** must be conducted in the following manner:

(A) Automatic Line Leak Detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square-inch line pressure within one (1) hour **and are certified by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org.** A*[n annual]* test of the operation of the leak detector must be conducted **at least annually. The annual test must be conducted** in accordance with the manufacturer's *[requirements;]* **approved testing procedures.**

1. Line leak detectors must monitor all pressurized piping, including pressurized piping beyond the first or master dispenser but not including other piping above the shear valve inside the dispenser or dispenser hoses to the nozzle.

2. Line leak detector operability test reports must include facility name and address, line leak detector manufacturer, model and serial number, if legible, testing date, test method, technician name and affiliation, and a certification of results;

(B) Line Tightness Testing. A periodic test of piping may be conducted only if it can detect a one-tenth (0.1)-gallon-per-hour leak rate at one and one-half (1.5) times the operating pressure; *[and]*

(C) Applicable Tank Methods. Any of the methods in *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(E)–(H) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances*[.]*; **and**

(D) Emergency Generator Tanks. For a tank that stores fuel solely for use by an emergency generator, or a tank that stores fuel for an emergency generator and heating oil for consumptive use on the premises where stored, interstitial line monitoring with sump sensors, an alarm, and secondary containment may be used on pressurized lines in lieu of the automatic line leak detector, required in 10 CSR 26-2.041 and subsection (1)(A) of this rule.

AUTHORITY: sections ***319.105 and*** *319.107,* ***RSMo 2000 and section 319.137,*** *RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.044. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.045] ***10 CSR 26-2.045*** **Release Detection** *[Recordkeeping]* ***Record Keeping***. The commission is moving the rule and amending section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending rule numbers, and updating the citations in the authority section of the rule.

(1) All underground storage tank (UST) system owners and operators must maintain records in *[10 CSR 20-10.034]* **10 CSR 26-2.034** demonstrating compliance with applicable release detection requirements in *[10 CSR 20-10.040–10 CSR 20-10.045]* **10 CSR 26-2.040–10 CSR 26-2.045**. These records must include the following:

(B) The results of any sampling, testing, or monitoring must be maintained for at least one (1) year, or for another reasonable period of time determined by the department, except that the results of tank tightness testing conducted in accordance with *[10 CSR 20-10.043]***10 CSR 26-2.043**(1)(C) must be retained until the next test is conducted; and

AUTHORITY: sections ***319.105 and*** *319.107,* ***RSMo 2000 and section 319.137,*** *RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.045. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

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email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.050] ***10 CSR 26-2.050*** **Reporting of Suspected Releases**. The commission is moving the rule and amending section (1).

PURPOSE: The commission is proposing to move the rule, amend section (1) to clarify vague language, and update citations in the authority section of the rule.

(1) Owners and operators of underground storage tank (UST) systems must report to the department within twenty-four (24) hours and follow the procedures for release investigation and confirmation in *[10 CSR 20-10.052 for any]* **10 CSR 26-2.052 upon discovery of one (1) or more** of the following conditions:

(B) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of *[product]* **a regulated substance** from the UST system *[or]***,** an unexplained presence of water in the tank**, or visible leaks from aboveground piping or ancillary equipment connected to a UST**), unless system equipment is found to be defective but not leaking and is immediately repaired or replaced; *[and]* **or**

(C) Monitoring results from a release detection method required under *[10 CSR 20-10.041]* **10 CSR 26-2.041** and *[10 CSR 20-10.042]* **10 CSR 26-2.042** that indicate a release may have occurred unless—

1. The monitoring device is found to be defective and is immediately repaired, recalibrated**,** or replaced and additional monitoring does not confirm the initial result; *[and]* **or**

2. In the case of inventory control, a second month of data does not confirm the initial result.

AUTHORITY: [sections 319.107, RSMo Supp. 1989 and 644.026, RSMo Supp. 1993.] ***section 319.109, RSMo Supp. 2010.*** *This rule originally filed as 10 CSR 20-10.050. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.051] ***10 CSR 26-2.051*** **Investigation Due to Off-Site Impacts**. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to move the rule, amend a rule number reference, and update citations in the authority section of the rule.

(1) When required by the department, owners and operators of underground storage tank (UST) systems must follow the steps for confirmation of a release in *[10 CSR 20-10.052]* **10 CSR 26-2.052** to determine if the UST system is the source of the off-site impacts. These impacts include the discovery of regulated substances such as the presence of free product or vapors in soils, basements, sewer and utility lines**,** and nearby surface and drinking waters that have been observed by the department or brought to its attention by another party.

AUTHORITY: section[s] ***319.107, RSMo 2000 and sections*** *319.109* ***and 319.137****, RSMo Supp. [1989]* ***2010*** *[and 644.026, RSMo Supp. 1993]. This rule originally filed as 10 CSR 20-10.051. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.052] 10 CSR 26-2.052* Release Investigation and Confirmation Steps**. The commission is proposing to move the rule and amend sections (1) and (2).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending sections (1) and (2) to clarify vague language, and updating the citations in the authority section of the rule.

(1) Unless corrective action is initiated in *[10 CSR 20-10.060–10 CSR 20-10.067]* **accordance with 10 CSR 26-2.070–10 CSR 26-2.083**, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under *[10 CSR 20-10.050]* **10 CSR 26-2.050** within seven (7) days or another reasonable time period specified by the department using either the following steps or another procedure approved by the department:

(A) System Test. Owners and operators must conduct tests (tightness testing of tanks in *[10 CSR 20-10.043(1)(C)]* **10 CSR 26-2.043(1)(D)** and piping in *[10 CSR 20-10.044]***10 CSR 26-2.044**(1)(B)) to determine whether a leak exists in that portion of the tank that routinely contains *[product]* **a regulated substance** or the attached delivery piping*[,]* or both.

1. Owners and operators must repair, replace**,** or upgrade the underground storage tank (UST) system, and begin **site check in accordance with subsection (1)(B) and** corrective action in *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083** if the test results for the system, tank**,** or delivery piping indicate that a leak exists.

2. Further investigation is not required if the test results for the system, tank**,** and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

3. Owners and operators must conduct a site check as described in subsection (1)(B) of this rule if the test results for the system, tank**,** and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release; or

(B) Site Check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations**,** and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater**,** and other factors appropriate for identifying the presence and source of the release.

1. If the site check indicates that a release has occurred, owners and operators must begin **site characterization and** corrective action in accordance with *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083**; or

2. If the results of the site check do not indicate that a release has occurred, the investigation may stop.

(2) Owners and operators shall follow a written procedure. *[To comply with this rule, the department's Site Characterization Guidance Document may be used as a written procedure. Other written procedures may be used with prior written approval of the department.]* **A copy of the written procedure or, if the written procedure is commonly available, a clear reference to the written procedure shall be submitted to and approved by the department prior to beginning activities required by this rule.**

*AUTHORITY: sections **319.105 and 319.107, RSMo 2000 and sections** 319.109 **and 319.137**, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.052. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.053] 10 CSR 26-2.053* Reporting and Cleanup of Spills and Overfills**. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending the content of the rule in section (1) to clarify vague language, and updating the citations in the authority section of the rule.

(1) Owners and operators of underground storage tank (UST) systems must contain and immediately clean up a spill or overfill. The spill or overfill must be reported to the department within twenty-four (24) hours. Owners and operators must begin **site check, in accordance with 10 CSR 26-2.052(1)(B), and** corrective action in accordance with *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083** in the following cases:

*AUTHORITY: section[s] 319.109, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.053. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.060] ***10 CSR 26-2.070*** **Release Response and Corrective Action**. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1), and updating the citations in the authority section of the rule.

(1) Owners and operators of petroleum or hazardous substance underground storage tank (UST) systems must comply, in response to a confirmed release from the UST system, with the requirements of *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083** except for USTs excluded under *[10 CSR 20-10.010(2)]* **10 CSR 26-2.010(2)** and UST systems subject to the Resource Conservation and Recovery Act (RCRA), Subtitle C corrective action requirements under Section 3004(u).

AUTHORITY: sections 319.109 ***and 319.137****, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.060. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.061] ***10 CSR 26-2.071*** **Initial Release Response** ***and Corrective Action***. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1) to clarify vague language, and updating the citations in the authority section of the rule.

(1) Upon confirmation of a release in *[10 CSR 20-10.052]* **10 CSR 26-2.052**, or after a release from the underground storage tank (UST) system is identified in any other manner, owners and operators must perform the following initial response actions within twenty-four (24) hours *[of a release]*:

(A) Report the release to the department *[(for example, by telephone or electronic mail)]* **in accordance with 10 CSR 26-2.050**;

AUTHORITY: section[s] 319.109, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] ***2010****. This rule originally filed as 10 CSR 20-10.061. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2***—Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.062] ***10 CSR 26-2.072*** **Initial Abatement Measures** *[and Site Check]* ***and Investigation***. The commission is proposing to move the rule and amend the rule title and section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1) to clarify vague language, and updating the citations in the authority section of the rule.

(1) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures **upon confirmation of a release**:

(E) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by *[10 CSR 20-10.052(1)(B)]* **10 CSR 26-2.052(1)(B)** or the closure site assessment of *[10 CSR 20-10.072(1)]* **10 CSR 26-2.062**. In selecting sample types, sample locations**,** and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater**,** and other factors as appropriate for identifying the presence and source of the release; and

(F) Investigate to determine the possible presence of free product and begin free product removal as soon as practicable in **accordance with** *[10 CSR 20-10.064]* **10 CSR 26-2.075**.

AUTHORITY: sections 319.109 ***and 319.137****, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.062. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2***—Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.063] ***10 CSR 26-2.074*** **Initial Site Characterization**. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending rule number references in section (1), and updating the citations in the authority section of the rule.

(1) Unless directed to do otherwise by the department, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in *[10 CSR 20-10.060 and 10 CSR 20-10.061]* **10 CSR 26-2.070, 10 CSR 26-2.071, and 10 CSR 26-2.072**. This information must include, but is not necessarily limited to, the following:

(C) Results of the site check required under *[10 CSR 20-10.062(1)(E)]* **10 CSR 26-2.072(1)(E)**; and

(D) Results of the free product investigations required under *[10 CSR 20-10.062(1)(F)]* **10 CSR 26-2.072(1)(F)** to be used by owners and operators to determine whether free product must be recovered under *[10 CSR 20-10.064]* **10 CSR 26-2.075**.

AUTHORITY: sections 319.109 ***and 319.137****, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993]* ***2010****. This rule originally filed as 10 CSR 20-10.063. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2***—Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

*[10 CSR 20-10.064] **10 CSR 26-2.075*** **Free-Product Removal**. The commission is moving the rule and amending section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1), and updating the citations in the authority section of the rule.

(1) At sites where the investigation reveals free product under *[10 CSR 20-10.062(1)(F)]* **10 CSR 26-2.072(1)(F)**, owners and operators must remove as much free product as practicable as determined by the department. Any actions initiated under *[10 CSR 20-10.061–10 CSR 20-10.063]* **10 CSR 26-2.071–10 CSR 26-2.074** or preparation for actions required under *[10 CSR 20-10.065–10 CSR 20-10.066]* **10 CSR 26-2.078–10 CSR 26-2.082** must also be continued. In meeting the requirements of this rule, owners and operators must—

*AUTHORITY: sections 319.109 **and 319.137**, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.064. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

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Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

*[10 CSR 20-10.065] **10 CSR 26-2.078*** **Investigations for Soil and Groundwater Cleanup**. The commission is moving the rule and amending sections (1) and (3).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending sections (1) and (3) to clarify vague language, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Owners and operators must conduct investigations of the release, the release site**,** and the surrounding area to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater if any of the following conditions exist:

(B) Free product is found to need recovery in compliance with *[10 CSR 20-10.064]* **10 CSR 26-2.075**;

(C) There is evidence that contaminated soils may be in contact with groundwater as found during the initial response measures or investigations required under *[10 CSR 20-10.060–10 CSR 20-10.064]* **10 CSR 26-2.070–10 CSR 26-2.075**; or

(3) Owners and operators shall follow a written procedure. *[To comply with this rule, the department's Site Characterization Guidance Document may be used as a written procedure.]*

(A) Until December 31, 2012, owners and operators may use the department's *Risk-Based Corrective Action for Petroleum Storage Tanks* guidance document dated February 2004, as amended March 8, 2005, by *Notice of Modifications to the Process and Interim Guidance Pertaining to Application of the New Soil Type Dependent Tier 1 Risk-Based Target Levels*; the March 18, 2005, *Soil Type Determination Guidelines*; the March 3, 2005, Table 3-1 *Default Target Levels*; the April 2005 Table 4-1 *Soil Concentration Levels to Determine the Need for Groundwater Evaluation During Tank Closure*; the February 2005 Tables 7-1(a) through 7-12(c) Tier 1 Risk-Based Target Levels; and the April 21, 2005, *Soil Gas Sampling Protocol*. The guidance and amendments were published by the Department of Natural Resources, PO Box 176, Jefferson City, Missouri 65102-0176, and are hereby incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(B) Other written procedures may be used with prior written approval of the department.

*AUTHORITY: sections 319.109 **and 319.137**, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.065. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste

Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.066] 10 CSR 26-2.082* Corrective Action Plan**. The commission is moving the rule and amending sections (1), (2), and (5).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending the content of the rule in sections (1), (2), and (5) to clarify vague language, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment, as determined by the department, after fulfilling the requirements for release reporting and investigation in *[10 CSR 20-10.061–10 CSR 20-10.063]* **10 CSR 26-2.071–10 CSR 26-2.074**. Owners and operators must modify their plan as necessary to meet this standard.

(A) The department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater at any point after reviewing the information submitted for release reporting and investigation in *[10 CSR 20-10.061–10 CSR 20-10.063]* **10 CSR 26-2.071–10 CSR 26-2.074**. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department.

(B) Owners and operators may choose to submit a corrective action plan for responding to contaminated soil and groundwater after fulfilling the requirements of *[10 CSR 20-10.061–10 CSR 20-10.063]* **10 CSR 26-2.071–10 CSR 26-2.074**.

(2) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health*[,]* **and** safety and the environment. In making this determination the department should consider the following factors as appropriate:

(F) Any information assembled in *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083**.

(5) Owners and operators shall follow a written procedure. *[To comply with this rule, the department's Corrective Action Guidance Document may be used as a written procedure.]*

(A) Until December 31, 2012, owners and operators may use the department's *Risk-Based Corrective Action for Petroleum Storage Tanks* guidance document dated February 2004, as amended March 8, 2005, by *Notice of Modifications to the Process and Interim Guidance Pertaining to Application of the New Soil Type Dependent Tier 1 Risk-Based Target Levels*; the March 18, 2005, *Soil Type Determination Guidelines*; the March 3, 2005, Table 3-1 *Default Target Levels*; the April 2005 Table 4-1 *Soil Concentration Levels to Determine the Need for Groundwater Evaluation During Tank Closure*; the February 2005 Tables 7-1(a) through 7-12(c) Tier 1 Risk-Based Target Levels; and the April 21, 2005, *Soil Gas Sampling Protocol*. The guidance and amendments were published by the Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102-0176, and are hereby incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(B) Other written procedures may be used with prior written approval of the department.

*AUTHORITY: sections 319.109 **and 319.137**, **RSMo** Supp. [1989] and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.066. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

***[10 CSR 20-10.067] 10 CSR 26-2.083* Public Participation**. The commission is moving the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

*AUTHORITY: sections 319.109 **and 319.137**, RSMo Supp. [1989 and 644.026, RSMo Supp. 1993] **2010**. This rule originally filed as 10 CSR 20-10.067. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.068] ***10 CSR 26-2.080*** **Risk-Based** *[Clean-Up]* ***Target*** **Levels**. The commission is proposing to move the rule and to amend the rule title.

PURPOSE: The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

*AUTHORITY: section[s] 319.111, RSMo [1994] **2000** and **sections** 319.109 and 319.137, RSMo Supp. [1996] **2010**. This rule originally filed as 10 CSR 20-10.068. Original rule filed Jan. 2, 1996, effective Aug. 30, 1996. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Moved April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.070] ***10 CSR 26-2.060*** *[Temporary Closure]* ***Taking USTs Out of Use***. The commission is amending the rule title, the purpose, and sections (1)–(3), adding new sections (4)–(8), and moving the rule.

PURPOSE: The commission proposes to amend the rule to update referenced documents, clarify vague language, and include more relevant, modern equipment and testing descriptions. The commission also proposes to amend requirements for out of use tanks, including when a site assessment may be required, when tanks must be permanently closed, and how to re-open out of use tanks. The commission is moving the rule to 10 CSR 26-2, amending the purpose statement and sections (1)–(3), adding sections (4)–(9), and updating the citations in the authority section of the rule.

*PURPOSE: This rule contains the [procedures] **requirements** for [placing] underground storage tanks **that are taken** out of service [or temporarily closing underground storage tanks].*

(1) When an underground storage tank (UST) system is *[temporarily closed,]* **out of use, as defined in 10 CSR 26-2.012, the** owner*[s]* and/**or** operator*[s]* must continue operation and maintenance of corrosion protection**, as described** in *[10 CSR 20-10.031 and release detection in 10 CSR 20-10.040—10 CSR 20-10.045]* **10 CSR 26-2.031, and/or interior lining inspection and maintenance, as described in 10 CSR 26-2.021, until the site assessment described in 10 CSR 26-2.062 of this rule has been completed**. Release reporting, investigation**,** and corrective action**, as described** in *[10 CSR 20-10.050–10 CSR 20-10.067]* **10 CSR 26-2.050–10 CSR 26-2.083,** must be performed if a release is suspected or confirmed. *[If the UST system is empty, release detection is not required. The UST system is empty when all materials have been removed so that no more than one inch (1") (or two and one-half (2.5) centimeters) of residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.]*

(2) Owners and operators must also comply with the following requirements when a UST system is *[temporarily closed]* **out of use** for three (3) months or more:

(3) *[When a]* **For a UST that remains out of use, within twelve (12) months of taking the** UST system *[is temporarily closed for more than twelve (12) months]* **out of use**, owners and operators must **either—**

(A) *[p]***P**ermanently close the UST system *[if it does not meet either performance standards in 10 CSR 20-10.020 for new UST systems or the upgrading requirements in 10 CSR 20-10.021 except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve (12)-month period]* in accordance with *[10 CSR 20-10.071–10 CSR 20-10.074, unless the department provides an extension of the twelve (12)-month temporary closure period.]* **10 CSR 26-2.061–10 CSR 26-2.064; or**

(B) *[Owners and operators must c]***C**omplete a site assessment in accordance with *[10 CSR 20-10.072 before such an extension can be applied for]* **10 CSR 26-2.062**.

(4) Within five (5) years of the date on which the UST was initially taken out of use, the owner or operator must permanently close the UST system, as described in 10 CSR 26-2.061–10 CSR 26-2.064.

(5) To re-open a steel tank system that has been out of use for more than twelve (12) months, the tank owner or operator must—

(A) Complete one (1) of the following three (3) options:

1. Ensure that the steel tank is structurally sound, using an integrity test, as defined in 10 CSR 26-2.021, and—

A. If cathodically protected, the owner or operator must recertify the cathodic protection system in accordance with the requirements described in 10 CSR 26-2.031; or

B. If the tank was internally lined, the owner or operator must ensure that the lining is still functioning as designed and is in compliance with 10 CSR 26-2.021(3)(A);

2. Document that the tank has remained in compliance with the cathodic protection requirements described in 10 CSR 26-2.031; or

3. Document that the tank has remained in compliance with the interior lining requirements described in 10 CSR 26-2.021(3)(A);

(B) Conduct line tightness testing and get a passing result; and

(C) Ensure that all ancillary equipment is tested for proper operation.

(6) To re-open a fiberglass-reinforced plastic tank system that has been out of use for more than twelve (12) months, the tank owner or operator must—

(A) Have the tank and piping recertified by the manufacturer(s); or

(B) Provide tank deflection readings, confirming that these readings are within the manufacturer's allowable range; and

(C) Conduct line tightness testing and get a passing result; and

(D) Ensure that all ancillary equipment is tested for proper operation.

(7) To re-open a clad steel tank system that has been out of use for more than twelve (12) months, the tank owner or operator must—

(A) Have the tank and piping recertified by the manufacturer(s); or

(B) Conduct line and tank tightness testing and get a passing result; and

(C) Ensure that all ancillary equipment is tested for proper operation.

(8) The department may grant an owner or operator a twelve (12)-month extension to meet the site assessment requirement in section (3) of this rule. The department will consider at least the following criteria when reviewing a request for an extension:

(A) The UST had been in use no more than ten (10) years;

(B) Other USTs remain in use at the site;

(C) The owner or operator demonstrates that his or her financial responsibility mechanism allows additional time in which to report a release from the out-of-use UST and file a claim for that release; and

(D) There is no evidence of a suspected or confirmed release.

(9) Owners and/or operators must notify the department within thirty (30) days of any change in use of the tank (including taking the tank out of use or re-opening the tank).

AUTHORITY: sections ***319.107 and*** *319.111, RSMo [Supp. 1989]* ***2000*** *and [644.026]* ***sections 319.015 and 319.137****, RSMo Supp. [1993]* ***2010****. This rule originally filed as 10 CSR 20-10.070. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions fifty-one thousand two hundred sixty-seven dollars ($51,267) aggregate cost to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities four hundred sixty-one thousand four hundred eight dollars ($461,408) aggregate cost to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:
10 CSR 20-10.070 Temporary Closure
Type of Rulemaking:
Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	**Estimated Cost of Compliance in the Aggregate**
Federal, State, County, City owned or affiliated underground storage tank owners	$51,267 (aggregate)
Missouri Department of Natural Resources	$0

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment applies to out of service tanks and is intended to reduce the likelihood that an operating tank facility will be abandoned, thereby becoming a blight in the community and an environmental liability. The original regulations forced replacement or upgrade of old steel tanks, but allowed newer tank systems to remain in the ground indefinitely. Today, the problem is that "temporarily" closed tanks may remain in the ground indefinitely, without consideration for whether the tank, piping, fittings and other equipment have become compromised. Some of the proposed regulation changes address these tanks that are not in use, specifically those where the owner has no intention of re-opening. The proposed change would require the owner/operator of an out-of-use UST system that does not re-open within one year to either: (a) permanently close the tank or (b) determine if a release has occurred. Flexibility is allowed for newer tank systems if the owner/operator purchases an extension of time from his financial responsibility mechanism provider so he/she will still have money available for a cleanup, should one be required. The estimated cost for Option (b), a limited site assessment, is approximately $5,000 to $11,000. This is not a new cost triggered by the proposed rules; rather, it is a cost that may, in some cases, be incurred sooner under the proposed rules than under current rules.

In some cases, this proposed change will *reduce* the owner's cost of cleanup by assuring that he/she conducts a site assessment before the opportunity to make a claim with his/her financial responsibility provider expires.

Most of the temporarily closed tanks that will be affected have been out of use for over one year. Current sites that are taken out of use typically comply with this requirement at the request of their bank and/or financial responsibility mechanism. As such, the ongoing expense is considered negligible when compared to the total aggregate cost.

The following assumptions were used for these calculations:

- In January 2011, there were 866 tanks in temporary closure. Of those, 657 were in temp closure for more than 12 months. Of the 657 tanks out of use for more than a year, 475 are steel tanks that, under current regulations, already require permanent closure or costly testing. Since those steel tanks are already subject to closure or financially equitable requirements, only the remaining 182 tanks would be potentially have a new cost burden associated with this proposed change.
- The average number of tanks per existing facility is 2.84.
- After these 657 tanks are addressed, the department has calculated that, each year thereafter, the current modern sites will likely re-open quickly or permanently close and therefore not be subject to these requirements. Outside factors (e.g. re-sale, bank mortgage requirements, financial responsibility deadlines) compel these sites to address these tanks before this requirement would apply.
- For the purposes of this calculation, the median $8,000 site assessment cost is used. The cost is per site, not per tank.
- An estimated 90% of tank sites are owned by private entities. An estimated 10% of tank sites are owned by federal, state, county, city and other local government entities.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.070:

- 182 (non-steel tanks temporarily closed for more than one year) ÷ 2.84 average number of tanks per facility x $8,000 (median site assessment cost) x 10% (publically owned portion)= $51,267 total aggregate cost for compliance with site assessment requirements

Please note, these costs would be incurred at closure, regardless of when tank closure occurs. While providing these calculated costs as potential "new" costs, in actuality, these are just costs that would be incurred earlier under the proposed changes than they would be under the existing regulation.

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources

The Department of Natural Resources' Hazardous Waste Program already has a Closure and Technology Unit that tracks, reviews and inspects tank closures. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name
10 CSR 20-10.070 Temporary Closure
Type of Rulemaking
Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of out of use underground storage tank systems • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems	Owners of approximately 300 temporarily closed underground storage tank facilities	$461,408

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment applies to out of service tanks and is intended to reduce the likelihood that an operating tank facility will be abandoned, thereby becoming a blight in the community and an environmental liability. The original regulations forced replacement or upgrade of old steel tanks, but allowed newer tank systems to remain in the ground indefinitely. Today, the problem is that "temporarily" closed tanks may remain in the ground indefinitely, without consideration for whether the tank, piping, fittings and other equipment have become compromised. Some of the proposed regulation changes address these tanks that are not in use, specifically those where the owner has no intention of re-opening. The proposed change would require the owner/operator of an out-of-use UST system that does not re-open within one year to either: (a) permanently close the tank or (b) determine if a release has occurred. Flexibility is allowed for newer tank systems if the owner/operator purchases an extension of time from his financial responsibility mechanism provider so he/she will still have money available for a cleanup, should one be required. The estimated cost for Option (b), a limited site assessment, is approximately $5,000 to $11,000. This is not a new cost triggered by the proposed rules; rather, it is a cost that may, in some cases, be incurred sooner under the proposed rules than under current rules.

In some cases, this proposed change will *reduce* the owner's cost of cleanup by assuring that he/she conducts a site assessment before the opportunity to make a claim with his/her financial responsibility provider expires.

Most of the temporarily closed tanks that will be affected have been out of use for over one year. Current sites that are taken out of use typically comply with this requirement at the request of their bank and/or financial responsibility mechanism. As such, the ongoing expense is considered negligible when compared to the total aggregate cost.

The following assumptions were used for these calculations:

- In January 2011, there were 866 tanks in temporary closure. Of those, 657 were in temp closure for more than 12 months. Of the 657 tanks out of use for more than a year, 475 are steel tanks that, under current regulations, already require permanent closure or costly testing. Since those steel tanks are already subject to closure or financially equitable requirements, only the remaining 182 tanks would be potentially have a new cost burden associated with this proposed change.
- The average number of tanks per existing facility is 2.84.
- After these 657 tanks are addressed, the department has calculated that, each year thereafter, the current modern sites will likely re-open quickly or permanently close and therefore not be subject to these requirements. Outside factors (e.g. re-sale, bank mortgage requirements, financial responsibility

deadlines) compel these sites to address these tanks before this requirement would apply.

- For the purposes of this calculation, the median $8,000 site assessment cost is used. The cost is per site, not per tank.
- An estimated 90% of tank sites are owned by private entities. An estimated 10% of tank sites are owned by federal, state, county, city and other local government entities.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.070:

- 182 (non-steel tanks temporarily closed for more than one year) ÷ 2.84 average number of tanks per facility x $8,000 (median site assessment cost) x 90% (privately owned portion)= $461,408 total aggregate cost for compliance with site assessment requirements

Please note, these costs would be incurred at closure, regardless of when tank closure occurs. While providing these calculated costs as potential "new" costs, in actuality, these are just costs that would be incurred earlier under the proposed changes than they would be under the existing regulation.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—**Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.071] ***10 CSR 26-2.061*** **Permanent Closure and Changes in Service**. The commission is moving the rule, amending sections (1) and (3), and adding new sections (4) and (5).

PURPOSE: The commission proposes to amend the rule to establish expiration dates for closure notices, include references to new tank system equipment, and update referenced documents. The commission is moving the rule to 10 CSR 26-2, amending sections (1) and and (3), adding sections (4) and (5), and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Owners and operators must notify the department in writing, on forms provided by the department, at least thirty (30) days before beginning either permanent closure or a change in service of an underground storage tank (UST) *[in sections (2), (3), or (4) of this rule or within another reasonable time period determined by the department]*, unless this action is in response to corrective action **or the department approves a shorter time period**. The required assessment of the excavation zone under *[10 CSR 20-10.072]* **10 CSR 26-2.062** must be performed after notifying the department but before completion of the permanent closure or a change in service. **The closure notice is valid for one hundred eighty (180) days. If permanent closure or change in service does not commence within one hundred eighty (180) days of the date the notice is received by the department, a new closure notice must be submitted prior to commencing closure activities.**

(3) Continued use of a UST system to store a nonregulated substance is a change in service. Before a change in service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in *[10 CSR 20-10.072]* **accordance with 10 CSR 26-2.062**.

(4) Lining a steel tank with a material that is approved as a stand-alone underground storage tank under Underwriters' Laboratories Standard 1316, revised 2006, is a change in service. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com. Before a change in service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 10 CSR 26-2.062.

*[(4)]***(5)** Owners and operators shall follow a written procedure. *[To comply with this rule, the department's UST Closure Guidance Document may be used as a written procedure.]* **A copy of the written procedure or, if the written procedure is commonly available, a clear reference to the written procedure shall be submitted to and approved by the department prior to beginning activities required by this rule.** It may be supplemented with the following cleaning and closure procedures:

(A) American Petroleum Institute Recommended Practice 1604, *[Removal and Disposal of Used]* ***Closure of*** *Underground Petroleum Storage Tanks*, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards**;

(B) American Petroleum Institute *[Publication]* **Standard** 2015, ***Safe Entry and*** *Cleaning* ***of*** *Petroleum Storage Tanks*, ***Planning and Managing Tank Entry from Decommissioning through Recommissioning***, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards**;

(C) American Petroleum Institute *[Recommended Practice]* **Standard** 1631, *Interior Lining* ***and Periodic Inspection*** *of Underground Storage Tanks*, **revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards**; and

(D) Owners and operators may use other written procedures with prior written approval of the department.

AUTHORITY: sections ***319.105, 319.107, and*** *319.111, RSMo [Supp. 1994]* ***2000*** *and [644.026]* ***section 319.137****, RSMo Supp. [1998]* ***2010****. This rule originally filed as 10 CSR 20-10.071. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed April 1, 1999, effective March 30, 2000. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[10]2*—**Underground Storage Tanks—Technical Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.072] ***10 CSR 26-2.062*** **Assessing the Site at Closure or Change in Service**. The commission is proposing to move the rule and amend sections (1)–(3).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending the purpose and sections (1), (2), and (3) to clarify vague language, and updating the citations in the authority section of the rule.

*PURPOSE: This rule describes the requirements of a site assessment[, that is] **to** [determining] **determine** whether there has been a release from the underground storage tank system.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Before permanent closure or a change in service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the underground storage tank (UST) site. In selecting sample types, sample locations**,** and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater**,** and other factors appropriate for identifying the presence of a release. *[The requirements of this section are satisfied if vapor monitoring or groundwater monitoring in 10 CSR 20-10.043(E) and (F) is operating at the time of closure and indicates no release has occurred.]*

(2) If contaminated soils, contaminated groundwater**,** or free product as a liquid or vapor is discovered under section (1) of this rule, or by any other manner, owners and operators must begin **site investigation and** corrective action in *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.070–10 CSR 26-2.083**.

(3) Owners and operators shall follow a written procedure. *[To comply with this rule, the department's UST Closure Guidance Document may be used as a written procedure. Other written procedures may be used with prior written approval of the department.]*

(A) Until December 31, 2012, owners and operators may use the department's *Risk-Based Corrective Action for Petroleum Storage Tanks* guidance document dated February 2004, as amended March 8, 2005, by *Notice of Modifications to the Process and Interim Guidance Pertaining to Application of the New Soil Type Dependent Tier 1 Risk-Based Target Levels*; the March 18, 2005, *Soil Type Determination Guidelines*; the March 3, 2005, Table 3-1 *Default Target Levels*; the April 2005 Table 4-1 *Soil Concentration Levels to Determine the Need for Groundwater Evaluation During Tank Closure*; the February 2005 Tables 7-1(a) through 7-12(c) Tier 1 Risk-Based Target Levels; and the April 21, 2005, *Soil Gas Sampling Protocol*. The guidance and amendments were published by the Department of Natural Resources, PO Box 176, Jefferson City, MO 65102-0176, and are hereby incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(B) Other written procedures may be used with prior written approval of the department.

*AUTHORITY: section[s] 319.111, RSMo [Supp. 1989] **2000** and [644.026] **section 319.137**, RSMo Supp. [1993] **2010**. This rule originally filed as 10 CSR 20-10.072. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.073] ***10 CSR 26-2.063*** **Applicability to Previously Closed Underground Storage Tank Systems**. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1), and updating the citations in the authority section of the rule.

(1) The department may require that the owner and operator of an underground storage tank (UST) system permanently closed before December 22, 1988, must assess the excavation zone and close the UST system in accordance with *[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064** if releases from the UST, in the judgment of the department, may pose a current or potential threat to human health and the environment.

*AUTHORITY: section[s] 319.111, RSMo [Supp. 1989] **2000** and [644.026] **sections 319.109 and 319.137**, RSMo Supp. [1993] **2010**. This rule originally filed as 10 CSR 20-10.073. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center,

1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[10]2*—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.074] ***10 CSR 26-2.064*** **Closure Records**. The commission is proposing to move the rule and amend section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-2, amending section (1), and updating the citations in the authority section of the rule.

(1) Owners and operators must maintain records in accordance with *[10 CSR 20-10.034]* **10 CSR 26-2.034** that are capable of demonstrating compliance with closure requirements in *[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064**. The results of the site assessment in *[10 CSR 20-10.072]* **10 CSR 26-2.062** must be maintained for at least three (3) years after completion of permanent closure or change in service in one (1) of the following ways:

AUTHORITY: sections ***319.107 and*** *319.111, RSMo [Supp. 1989]* ***2000*** *and [644.026]* ***section 319.137****, RSMo Supp. [1993]* ***2010****. This rule originally filed as 10 CSR 20-10.074. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.090] ***10 CSR 26-3.090*** **Applicability**. The commission is moving the rule and amending sections (1)–(5).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending sections (1)–(5) to include updates to definitions in 10 CSR 26-2.

(1) Rules *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** apply to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this rule.

(2) Owners and operators of petroleum UST systems are subject to these requirements *[if they are in operation on or after the date for compliance established in 10 CSR 20-11.091.]* **immediately upon bringing a new underground storage tank system in operation. All tank systems that are in use are subject to these requirements.**

(3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115**.

(4) The requirements of *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** do not apply to owners and operators of any deferred or excluded UST system described in *[10 CSR 20-10.010]***10 CSR 26-2.010**(2) or (3).

(5) If the owner and operator of a petroleum UST are separate persons, only one (1) person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. *[Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in 10 CSR 20-11.091.]*

AUTHORITY: section[s] 319.114, RSMo [Supp. 1989 and 644.026, RSMo Supp. 1993] ***2000****. This rule originally filed as 10 CSR 20-11.090. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not

required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

PROPOSED RESCISSION

10 CSR 20-11.091 Compliance Dates. This rule established the deadlines for obtaining financial responsibility.

PURPOSE: This rule is being rescinded as all these deadlines have now passed and there is no need to keep them in the rule.

AUTHORITY: sections 319.114, RSMo Supp. 1989 and 644.026, RSMo Supp. 1993. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Rescinded: Filed April 15, 2011.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* ***Petroleum and Hazardous Substance Storage Tanks***
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.092] ***10 CSR 26-3.092*** **Definitions of Financial Responsibility Terms**. The commission is moving the rule and amending section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending section (1) to update rule references.

(1) The definitions set forth in 40 CFR 280.92, July 1, 1998, are incorporated by reference, subject to the following additions, modifications, substitutions**,** or deletions.

(A) The definitions set forth in this rule apply to terms when used in *[10 CSR 20-11.090 through 10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115**. In addition, the definitions in *[10 CSR 20-10.012]* **10 CSR 26-2.012** apply to the terms used in this chapter unless defined otherwise in this rule or in the rule in which the term is used. Modifications and additions to specific definitions are—

1. The definition for "Director of the Implementing Agency" in 40 CFR 280.92, is not incorporated in this rule;

2. At the end of the definition of "Financial Reporting Year" in 40 CFR 280.92, as incorporated in this rule, add the following sentence: **"**Financial reporting year may comprise a fiscal or calendar year period**"**;

3. In the definition of "provider of financial assurance" in 40 CFR 280.92, as incorporated into this rule, substitute *["10 CSR 20-11.095 through 10 CSR 20-11.103"]* **"10 CSR 26-3.095–10 CSR 26-3.103"** for "section 280.95–280.103," delete "issuer of a state-required mechanism**,**" and substitute "the Petroleum Storage Tank Insurance Fund" for "a state"; and

4. In the definition of "termination**"** in 40 CFR 280.92**,** as incorporated into this rule, substitute "in *[10 CSR 20-11.097(2)]* **10 CSR 26-3.097(2)**" for "under section 260.97(b)(1)."

*AUTHORITY: section[s] 319.114, RSMo [1994 and 319.129 and 644.026, RSMo Supp. 1998] **2000**. This rule originally filed as 10 CSR 20-11.092. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Amended: Filed April 1, 1999, effective March 30, 2000. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

***[10 CSR 20-11.093] 10 CSR 26-3.093* Amount and Scope of Required Financial Responsibility**. The commission is moving the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3.

AUTHORITY: section[s] 319.114, RSMo [Supp. 1989 and 644.026, RSMo Supp. 1993] 2000. This rule originally filed as 10 CSR 20-11.093. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

***[10 CSR 20-11.094] 10 CSR 26-3.094* Allowable Mechanisms and Combinations of Mechanisms**. The commission is moving the rule, amending sections (1) and (2), and adding Form 1 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references in sections (1) and (2), and adding Form 1 to the rule.

(1) Subject to the limitations of sections (2) and (3) of this rule—

(A) An owner or operator, including a local government owner or operator, may use any one (1) or combination of the mechanisms listed in *[10 CSR 20-11.095 through 10 CSR 20-11.103]* **10 CSR 26-3.095–10 CSR 26-3.103** to demonstrate financial responsibility under *[10 CSR 20-11.090 through 10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** for one (1) or more underground storage tanks (USTs); provided, that the total scope and amounts assured meet the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093**; and

(B) A local government owner or operator may use any one (1) or combination of the mechanisms listed in *[10 CSR 20-11.112 through 10 CSR 20-11.115]* **10 CSR 26-3.112–10 CSR 26-3.115** to demonstrate financial responsibility under *[10 CSR 20-11.090 through 10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** for one (1) or more USTs; provided, that the total scope and amounts assured meet the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093**.

(2) An owner or operator may use self-insurance to meet any deductible or co-pay portions of either insurance or risk retention group coverage under *[10 CSR 20-11.097]* **10 CSR 26-3.097** or Petroleum Storage Tank Insurance Fund under *[10 CSR 20-11.101]* **10 CSR 26-3.101**; provided, that—

(B) The owner or operator shall have a letter signed by the chief financial officer worded as specified in *[10 CSR 20-11.095(4)]* **10 CSR 26-3.095(4)**; and

(C) The answer(s) to *[10 CSR 20-11 Appendix]* Form 1**,** *[(see 10 CSR 20-11.115),]* **included herein,** Alternative I, line 8*[,]* or Alternative II, lines 9 and 15 is (are): yes—except that a current rating of the most recent bond issue by Standard and Poor's of AAA, AA, A**,** or BBB or Moody's of Aaa, Aa, A**,** or Ba may be substituted for the line 15 response.

Wording of Financial Assurance Instruments
Form 1—Letter from Chief Financial Officer

The following text should be used to comply with the requirements of 10 CSR 26-3.095(4) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [*insert name and address of the owner or operator or guarantor*]. This letter is in support of the use of [*insert "the financial test of self insurance" and/or "guarantee"*] to demonstrate financial responsibility for [*insert "taking corrective action" and/or "compensating third parties for bodily injury and property damage"*] caused by [*insert "sudden accidental releases" and/or "nonsudden accidental releases"*] in the amount of at least $[*insert dollar amount*] per occurrence and $[*insert dollar amount*] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [*insert "owner or operator" and/or "guarantor"*]: [*List for each facility: the name and address of the facility where tanks assured by this financial test are located and whether tanks are assured by this financial test by the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022*].
A [*insert "financial test" and/or "guarantee"*] is also used by this [*insert "owner or operator" or "guarantor"*] to demonstrate financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR parts 271 and 145:

Federal Rules

Closure (264.143 and 265.143)	$
Post-Closure Care (264.145 and 265.145)	$
Liability Coverage (264.147 and 265.147)	$
Corrective Action (264.101(b))	$
Plugging and Abandonment (144.63)	$
Closure	$
Post-Closure Care	$
Liability Coverage	$
Corrective Action	$
Plugging and Abandonment	$
Total	$

This [*insert "owner or operator" or "guarantor"*] has not received an adverse opinion, a disclaimer of opinion or a "going concern" qualification from an independent auditor on his/her financial statements for the latest completed fiscal year.

[*Fill in the information for Alternative I if the criteria of 10 CSR 26-3.095(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 10 CSR 26-3.095(3) are being used to demonstrate compliance with the financial test requirements.*]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test or guarantee	$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee	$
3. Sum of lines one and two	$
4. Total tangible assets	$
5. Total liabilities (if any of the amount reported on line three is included in total liabilities, you may deduct that amount from this line and add that amount to line six)	$
6. Tangible net worth (subtract line five from line four)	$
[_____Yes _____ No]	
7. Is line six at least ten (10) million dollars?	__**Yes** __ **No**
8. Is line six at least ten (10) times line three?	__**Yes** __ **No**
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	__**Yes** __ **No**
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	__**Yes** __ **No**
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	__**Yes** __ **No**
12. Has financial information been provided to Dunn and Bradstreet and has Dunn and Bradstreet provided a financial strength rating of 4A or 5A? (Answer ''Yes'' only if both criteria have been met.)	__**Yes** __ **No**

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test or guarantee	$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee	$
3. Sum of lines one and two	$
4. Total tangible assets	$
5. Total liabilities (if any of the amount reported on line three is included in total liabilities, you may deduct that amount from this line and add that amount to line six)	$
6. Tangible net worth (subtract line five from line four)	$
7. Total assets in the United States (required only if less than ninety percent (90%) of assets are located in the United States)	$
[_____ Yes _____ No]	
8. Is line six at least ten (10) million dollars?	**__Yes __ No**
9. Is line six at least six (6) times line three?	**__Yes __ No**
10. Are at least ninety percent (90%) of assets located in the United States? (If "No" complete line eleven)	**__Yes __ No**
11. Is line seven at least six (6) times line three?	**__Yes __ No**
(Fill in either lines twelve through fifteen or lines sixteen through eighteen)	
12. Current assets	$
13. Current liabilities	$
14. Net working capital (subtract line thirteen from line twelve)	$
[_____ Yes _____ No]	
15. Is line fourteen at least six (6) times line three?	**__Yes __ No**
16. Current bond rating of most recent bond issue	
17. Name of rating service _____	
18. Date of maturity of bond _____	
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration or the Rural Electrification Administration?	**__Yes __ No**

(If ''No,'' please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines four through eighteen above and the financial statements for the latest fiscal year.)

(For both Alternative I and Alternative II complete the certification with this statement.)
"I hereby certify that the wording of this letter is identical to the wording specified in 10 CSR 26-3.095(4) as such rules were constituted on the date shown immediately below.''

[*Signature*]
[*Name*]
[*Title*]
[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [1994 and 319.129 and 644.026, RSMo Supp. 1996] **2000**. This rule originally filed as 10 CSR 20-11.094. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required: however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

***[10 CSR 20-11.095] 10 CSR 26-3.095* Financial Test of Self-Insurance**. The commission is moving the rule and amending sections (1)–(4) and (6).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references in sections (1)–(4) and (6).

(1) An owner or operator, or guarantor**,** may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, or guarantor**,** shall meet the criteria of section (2) or (3) of this rule based on year-end financial statements for the latest completed fiscal year.

(2) The owner or operator, or guarantor**,** shall have a tangible net worth that meets the following requirements:

(A) The owner or operator, or guarantor**,** shall have a tangible net worth of at least ten (10) times—

1. The total of the applicable aggregate amount required by *[10 CSR 20-11.093]* **10 CSR 26-3.093** based on the number of underground storage tanks (USTs) for which a financial test is used to demonstrate financial responsibility to the department;

2. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates**,** and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to **the** Environmental Protection Agency (EPA) in 40 CFR parts 264.101, 264.143, 264.145, 264.147, 265.143, 265.145**,** and 265.147 or under any state program authorized by EPA under 40 CFR part 271; or

3. The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR part 144.63 or under any program authorized by EPA under 40 CFR part 145;

(3) The owner or operator, or guarantor**,** shall meet the financial test requirements of 40 CFR 264.147(f)(1), modified as follows:

(A) The owner or operator, or guarantor**,** must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in *[10 CSR 20-11.093]* **10 CSR 26-3.093** (2)(A) and (B) for the amount of liability coverage each time specified in that section;

(4) To demonstrate that it meets the financial test under section (2) or (3), the chief financial officer of the owner or operator, or guarantor**,** shall sign within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12)-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as listed in *[10 CSR 20-11 Appendix]*, Form 1 (see *[10 CSR 20-11.115]* **10 CSR 26-3.094**).

(6) The director may require reports of financial condition at any time from the owner or operator, or guarantor. If the director finds, on the basis of these reports or other information, that the owner or operator, or guarantor**,** no longer meets the financial test requirements of *[10 CSR 20-11.095]* **10 CSR 26-3.095**(2) or (3) and (4), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of that finding.

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.095. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.096] ***10 CSR 26-3.096*** **Guarantee**. The commission is moving the rule, amending sections (1)–(4), and adding Form 2 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references in sections (1)–(4), and adding Form 2 to the rule.

(1) An owner or operator may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be—

(2) Within one hundred twenty (120) days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of *[10 CSR 20-11.095]* **10 CSR 26-3.095** based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in *[10 CSR 20-11.095]***10 CSR 26-3.095**(4) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (120) days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that s/he no longer meets the requirements of the financial test of *[10 CSR 20-11.095]***10 CSR 26-3.095**(2) or (3) and (4), the guarantor must notify the owner or operator within ten (10) days of receiving that notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in *[10 CSR 20-11.110]***10 CSR 26-3.110**(5).

(3) The guarantee shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 2 *[(see 10 CSR 20-11.115)]***, included herein**.

(4) An owner or operator who uses a guarantee to satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under *[10 CSR 20-11.108]* **10 CSR 26-3.108**. This standby trust fund shall meet the requirements specified in *[10 CSR 20-11.103]* **10 CSR 26-3.103**.

Form 2—Guarantee

The following text should be used to comply with the requirements of 10 CSR 26-3.096(3) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Guarantee

Guarantee made this [*date*] by [*name of guaranteeing entity*], a business entity organized under the laws of the State of [*name of state*], herein referred to as guarantor, to the Department of Natural Resources and to any and all third parties and obligees on behalf of [*owner or operator*] of [*business address*].

Recitals

(A) Guarantor meets or exceeds the financial test criteria of 10 CSR 26-3.095(2) or 10 CSR 26-3.095(3) and 10 CSR 26-3.095(4) and agrees to comply with the requirements for guarantors as specified in 10 CSR 26-3.096(2).

(B) [*Owner or operator*] owns or operates the following underground storage tank(s) covered by this guarantee: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022, and the name and address of the facility.*] This guarantee satisfies 10 CSR 26-3.090–10 CSR 26-3.115 requirements for assuring funding for [*insert "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the above-identified underground storage tank(s) in the amount of [*insert dollar amount*] per occurrence and [*insert dollar amount*] annual aggregate.

(C) [*Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)*] [*owner or operator*], guarantor guarantees to department and to any and all third parties that:

In the event that [*owner or operator*] fails to provide alternate coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the director has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director, shall fund a standby trust fund in accordance with the provisions of 10 CSR 26-3.112, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [*owner or operator*] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, the guarantor upon written instructions from the director, shall fund a standby trust in accordance with the provisions of 10 CSR 26-3.108 in an amount not to exceed the coverage limits specified above.

If [*owner or operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "non-sudden"*] accidental releases arising from the operation of the above-identified tank(s) or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor upon written instructions from the director, shall fund a standby trust in accordance with the provisions of 10 CSR 26-3.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(D) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 10 CSR 26-3.095(2) or 10 CSR 26-3.095(3) and 10 CSR 26-3.095(4), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [*owner or operator*]. The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by [*owner or operator*], as evidenced by the return receipt.

(E) Guarantor agrees to notify [*owner or operator*] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

(F) Guarantor agrees to remain bound under this guarantee not withstanding any modification or alteration of any obligation of [*owner or operator*] pursuant to 10 CSR 26, Chapters 2 and 3.

(G) Guarantor agrees to remain bound under this guarantee for so long as [*owner or operator*] must comply with the applicable financial responsibility requirements of 10 CSR 26-3.090–10 CSR 26-3.115 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*owner or operator*], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [*owner or operator*], as evidenced by the return receipt.

(H) The guarantor's obligation does not apply to any of the following:

1. Any obligation of [*insert owner or operator*] under Workers' Compensation, disability benefits, or unemployment compensation law or other similar law;

2. Bodily injury to an employee of [*insert owner or operator*] arising from, and in the course of, employment by [*insert owner or operator*];

3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft;

4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of or occupied by [*insert owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

5. Bodily injury or property damage for which [*insert owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

(I) Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by [*owner or operator*].

I hereby certify that the wording of this guarantee is identical to the wording specified in 10 CSR 26-3.096(3) as such rules were constituted on the effective date shown immediately below.

Effective date:

[*Name of guarantor*]

[*Authorized signature for guarantor*]

[*Name of person signing*]

[*Title of person signing*]

Signature of witness or notary:

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.096. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.097] ***10 CSR 26-3.097*** **Insurance and Risk Retention Group Coverage**. The commission is moving the rule, amending sections (1) and (2), and adding Forms 3 and 4 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references in sections (1) and (2), and adding Forms 3 and 4 to the rule.

(1) An owner or operator may satisfy financial responsibility requirements in *[10 CSR 20-11.093]* **10 CSR 26-3.093** by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. This insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy shall be amended by an endorsement worded as specified in *[10 CSR 20-11 Appendix,]* Form 3**,** *[(see 10 CSR 20-11.115)]* **included herein,** or evidenced by a certificate of insurance worded as specified in *[10 CSR 20-11 Appendix,]* Form 4**,** *[(see 10 CSR 20-11.115)]* **included herein**.

Form 3—Endorsement

The following text should be used to comply with the requirements of 10 CSR 26-3.097(2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

(A) Endorsement

Name: [*name of each covered location*]
Address: *[address of each covered location*]
Policy Number:
Period of Coverage: [*current policy period*]
Name of [*Insurer or Risk Retention Group*]:
Address of [*Insurer or Risk Retention Group*]:
Name of Insured:
Address of Insured:
Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted for 10 CSR 26-2.022 and the name and address of the facility.*]

for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental release;" in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the underground storage tank(s) identified above.

The limits of liability are [*insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location*], exclusive of legal defense costs which are subject to a separate limit under the policy. This coverage is provided under [*policy number*]. The effective date of said policy is [*date*].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subparagraphs A through E of this paragraph are hereby amended to conform with subparagraphs A through E:

A. Bankruptcy or insolvency of the insured shall not relieve the [*"Insurer" or "Group"*] of its obligations under the policy to which this endorsement is attached.

B. The [*"Insurer" or "Group"*] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [*"Insurer" or "Group"*]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 10 CSR 26-3.095 through 10 CSR 26-3.102.

C. Whenever requested by the director, the [*"Insurer" or "Group"*] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

D. Cancellation or any other termination of the insurance by the [*"Insurer" or "Group"*], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured.

[*Insert for claims-made policies*]

E. The insurance covers claims otherwise covered by the policy that are reported to the [*"Insurer" or "Group"*] within six (6) months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 10 CSR 26-3.097(2)(A) and that the [*"Insurer" or "Group"*] is [*"licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in this state"*].

[*Signature of authorized representative of Insurer or Risk Retention Group*]

[*Name of person signing*]

[*Title of person signing*]

Authorized Representative of [*Name of Insurer or Risk Retention Group*]

[*Address of Representative*]

Form 4—Certificate of Insurance

The following text should be used to comply with the requirements of 10 CSR 26-3.097(2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Certificate of Insurance

Name: [*name of each covered location*]

Address: [*address of each covered location*]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [*current policy period*]

Name of [*Insurer or Risk Retention Group*]:

Address of [*Insurer or Risk Retention Group*]:

Name of Insured:

Address of Insured:

Certification:

1. [*Name of Insurer or Risk Retention Group*], [*the "Insurer" or "Group"*], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022 and the name and address of the facility.*]

for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases;" in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations: indicate the type of coverage applicable to each tank or location*] arising from operating the underground storage tank(s) identified above.

The limits of liability are [*insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location*], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [*policy number*]. The effective date of said policy is [*date*].

2. The [''Insurer'' or ''Group''] further certifies the following with respect to the insurance described in Paragraph 1:

A. Bankruptcy or insolvency of the insured shall not relieve the [*"Insurer" or "Group"*] of its obligations under the policy to which this certificate applies.

B. The [*"Insurer" or "Group"*] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [*"Insurer" or "Group"*]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 10 CSR 26-3.095 through 10 CSR 26-3.102.

C. Whenever requested by the director, the [*"Insurer" or "Group"*] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

D. Cancellation or any other termination of the insurance by the [*"Insurer" or "Group"*], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured.

[*Insert for claims-made policies*]

E. The insurance covers claims otherwise covered by the policy that are reported to the [*"Insurer" or "Group"*] within six (6) months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable and prior to such policy renewal or termination date. Claims reported during such an extended reporting period are subject to the terms, conditions, limits, including limits of liability and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 10 CSR 26-3.097(2)(B) and that the [*"Insurer" or "Group"*] is [*"licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in this state"*].

[*Signature of authorized representative of Insurer*]

[*Type name*]

[*Title*]

Authorized Representative of [*Name of Insurer or Risk Retention Group*]

[*Address of Representative*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.097. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.098] ***10 CSR 26-3.098*** **Surety Bond**. The commission is moving the rule, amending sections (1), (2), and (4), and adding Form 5 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references in sections (1), (2), and (4), and adding Form 5 to the rule.

(1) An owner or operator may satisfy the financial responsibility requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by obtaining a surety bond that conforms to the requirements of this rule. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the United States Department of the Treasury.

(2) The surety bond shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 5**,** *[(see 10 CSR 20-11.115)]* **included herein**.

(4) The owner or operator who uses a surety bond to satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under *[10 CSR 20-11.108]* **10 CSR 26-3.108**. This standby trust fund shall meet the requirements specified in *[10 CSR 20-11.103]* **10 CSR 26-3.103**.

Form 5—Performance Bond

The following text should be used to comply with the requirements of 10 CSR 26-3.098(2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Performance Bond

Date bond executed:

Period of coverage:

Principal: [*legal name and business address of owner or operator*]

Type of organization: [*insert "individual," "joint venture," "partnership," or "corporation"*]

State of incorporation (if applicable):

Surety(ies): [*name(s) and business address(es)*]

Scope of Coverage: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022 and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"*].

Penal sums of bond	:
Per occurrence	$
Annual aggregate	$
Surety's bond number	:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-Sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action(s) against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [*"take corrective action, in accordance with 10 CSR 26-2.070–10 CSR 26-2.083 and the director's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "non-sudden" or "sudden and non-sudden"*] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 10 CSR 26-3.090–10 CSR 26-3.115, within one hundred twenty (120) days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(A) Any obligation of [*insert owner or operator*] under Workers' Compensation, disability benefits or unemployment compensation law or other similar law;

(B) Bodily injury to an employee of [*insert owner or operator*] arising from, and in the course of, employment by [*insert owner or operator*];

(C) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft;

(D) Property damage to any property owned, rented, loaned to, in the care, custody, or control of or occupied by [*insert owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

(E) Bodily injury or property damage for which [*insert owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [*the director*] that the Principal has failed to [*"take corrective action, in accordance with 10 CSR 26-2.070–10 CSR 26-2.083 and the director's instructions," and/or "compensate injured third parties"*] as guaranteed by this bond, the Surety(ies) shall either perform [*"corrective action in accordance with 10 CSR 26-2.070–10 CSR 26-2.083 and the director's instructions," and/or "third-party liability compensation"*] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the director under 10 CSR 26-3.108.

Upon notification by [*the director*] that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the director under 10 CSR 26-3.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment(s) shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 10 CSR 26-3.098(2) as such rules were constituted on the date this bond was executed.

PRINCIPAL

[*Signature(s)*]

[*Name(s)*]

[*Title(s)*]

[*Corporate seal*]

CORPORATE SURETY(IES)

[*Name and address*]

State of Incorporation:

Liability limit: $

[*Signature(s)*]

[*Name(s) and title(s)*]

[*Corporate seal*]

[*For every co-surety, provide signature(s), corporate seal and other information in the same manner as for Surety above.*]

Bond premium: $

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.098. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]*
Petroleum and Hazardous Substance Storage Tanks
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

***[10 CSR 20-11.099]* *10 CSR 26-3.099* Letter of Credit**. The commission is moving the rule, amending sections (1)–(3), and adding Form 6 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references, and adding Form 6 to the rule.

(1) An owner or operator may satisfy the financial responsibility requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit must be worded as specified in *[10 CSR 20-11 Appendix,]* Form 6 *[(see 10 CSR 20-11.115)]***, included herein**.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under *[10 CSR 20-11.108]* **10 CSR 26-3.108**. This standby trust fund must meet the requirements specified in *[10 CSR 20-11.103]* **10 CSR 26-3.103**.

Form 6—Irrevocable Standby Letter of Credit

The following text should be used to comply with the requirements of 10 CSR 26-3.090(2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[*Name and address of issuing institution*]

[*Name and address of director*]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [*owner or operator name*] of [*address*] up to the aggregate amount of [*in words*] United States dollars ($[insert dollar amount]), available upon presentation [*insert, if more than one (1) state is a beneficiary, "by any one (1) of you"*] of:

(A) Your sight draft, bearing reference to this letter of credit, No. , and

(B) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"*] arising from operating the underground storage tank(s) identified below in the amount of [*in words*] $[*insert dollar amount*] per occurrence and [*in words*] $[*insert dollar amount*] annual aggregate:

[*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided by in the notification submitted pursuant to 10 CSR 26-2.022 and the name and address of the facility.*]

The letter of credit may not be drawn on to cover any of the following:

1. Any obligation of [*insert owner or operator*] under a Workers' Compensation, disability benefits or unemployment compensation law or other similar law;

2. Bodily injury to an employee of [*insert owner or operator*] arising from, and in the course of, employment by [*insert owner or operator*];

3. Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft;

4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of or occupied by [*insert owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

5. Bodily injury or property damage for which [*insert owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

This letter of credit is effective as of [*date*] and shall expire on [*date*], but such expiration date shall be automatically extended for a period of [*at least the length of the original term*] on [*expiration date*] and on each successive expiration date unless, at least one hundred twenty (120) days before the current expiration date, we notify [*owner or operator*] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [*owner or operator*] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by [*owner or operator*], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us and we shall deposit the amount of the draft directly into the standby trust fund of [*owner or operator*], in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 10 CSR 26-3.099(2) as such rules were constituted on the date shown immediately below.

[*Signature(s) and title(s) of official(s) of issuing institution*]

[*Date*]

This credit is subject to [*insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce," or the *"Uniform Commercial Code"*].

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.099. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.101] ***10 CSR 26-3.101*** **Petroleum Storage Tank Insurance Fund**. The commission is moving the rule and amending section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references.

(1) An owner or operator may satisfy part of the financial responsibility requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** for underground storage tanks (USTs) located in this state from the Petroleum Storage Tank Insurance Fund. In addition, any other combination of mechanisms may be used to supplement coverage provided by the Petroleum Storage Tank Insurance Fund so that the sum of the mechanisms provides the required amount of assurance.

*AUTHORITY: section[s] 319.114 [and 644.026], RSMo [(1994)] **2000** and **section** 319.129, RSMo [(Cum. Supp. 1996)] **Supp. 2010**. This rule originally filed as 10 CSR 20-11.101. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.102] ***10 CSR 26-3.102*** **Trust Fund**. The commission is moving the rule and amending section (1) and subsections (1)(A) and (1)(D).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references.

(1) An owner or operator may satisfy the financial responsibility requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by establishing a trust fund that conforms to the requirements of this rule. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(A) The wording of the trust agreement shall be identical to the wording for a standby trust fund in *[10 CSR 20-11.103]***10 CSR 26-3.103**(2) and shall be accompanied by a formal certification of acknowledgment for a standby trust fund in *[10 CSR 20-11.103]***10 CSR 26-3.103**(3).

(D) If other financial assurance as specified in *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.102. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center,

1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.103] ***10 CSR 26-3.103*** **Standby Trust Fund**. The commission is moving the rule, amending sections (1)–(3), and adding Forms 7 and 8 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references, and adding Forms 7 and 8 to the rule.

(1) An owner or operator using any one (1) of the mechanisms authorized by *[10 CSR 20-11.096]* **10 CSR 26-3.096**, *[10 CSR 20-11.098]* **10 CSR 26-3.098,** or *[10 CSR 20-11.099]* **10 CSR 26-3.099** shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of this state.

(2) The standby trust agreement must be worded as specified in *[10 CSR 20-11 Appendix,]* Form 7 *[(see 10 CSR 20-11.115)]***, included herein**.

(3) The standby trust agreement must be accompanied by a formal certification of acknowledgment as specified in *[10 CSR 20-11 Appendix,]* Form 8 *[(see 10 CSR 20-11.115)]***, included herein**.

Form 7—Trust Agreement

The following text should be used to comply with the requirements of 10 CSR 26-3.102(6) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement" entered into as of [*date*] by and between [*name of the owner or operator*], a [*name of state*] [*insert "corporation," "partnership," "association," or "proprietorship"*], the "Grantor," and [*name of corporate trustee*], [*insert "Incorporated in the state of" or "a national bank"*], the "Trustee."

Whereas, the Department of Natural Resources, "the department," an agency of the state of Missouri, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the underground storage tank;

Whereas, the Grantor has elected to establish [*insert either "a guarantee," "surety bond," or "letter of credit"*] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

1. Definitions

As used in this Agreement:

A. The term ''Grantor'' means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

B. The term ''Trustee'' means the Trustee who enters into the Agreement and any successor Trustee.

2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [*identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments* (This paragraph is only applicable to the standby trust agreement)].

3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the ''Fund'' for the benefit of department. The Grantor and the Trustee intend that no third-party have access to the Fund except as herein provided. (The Fund is established initially as a standby to receive payments and shall not consist of any property.) Payments made by the provider of financial assurance pursuant to the director's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the department.

4. Payment for [*"Corrective Action" and/or "Third-Party Liability Claims"*:].

The Trustee shall make payments from the Fund as [*the director*] shall direct, in writing, to provide for the payment of the costs of [*insert "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"*] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

A. Any obligation of [*insert owner or operator*] under Workers' Compensation, disability benefits, or unemployment compensation law or other similar law;

B. Bodily injury to an employee of [*insert owner or operator*] arising from, and in the course of employment by [*insert owner or operator*];

C. Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

D. Property damage to any property owned, rented, loaned to, in the care, custody, or control of or occupied by [*insert owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

E. Bodily injury or property damage for which [*insert owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by the director, from the Fund for corrective expenditures and/or third-party liability claims in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time-to-time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his/her duties with respect to the trust fund solely in the interest of the beneficiaries and with care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

7. Commingling and investment.

The Trustee is expressly authorized in its discretion:

A. To transfer from time-to-time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

8. Express Powers of Trustee.

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

B. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

D. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

10. Advice of Counsel.

The Trustee may from time-to-time consult with counsel, who may be counsel to the Grantor with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of legal counsel.

11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time-to-time with the Grantor.

12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expense incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in paragraph 9 of this agreement.

13. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the director to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the director, except as provided for herein.

14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [*the director*] if the Grantor ceases to exist.

15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until

terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of [*insert name of state*], or the Comptroller of the Currency in the case of National Association banks.

18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each paragraph of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 10 CSR 26-3.103(2) as such rules were constituted on the date written above.

[*Signature of Grantor*]

[*Name of the Grantor*]

[*Title*]

Attest:

[*Signature of Trustee*]

[*Name of the Trustee*]

[*Title*]

[*Seal*]

[*Signature of Witness*]

[*Name of the Witness*]

[*Title*]

[*Seal*]

Form 8—Certification of Acknowledgments

The following text should be used to comply with the requirements of 10 CSR 26-3.103(3) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Certification of Acknowledgments

State of

County of

On this [*date*], before me personally came [*owner or operator*] to me known, who, being by me duly sworn, did depose and say that s/he resides at [*address*], that s/he is [*title*] of [*corporation*], the corporation described in and which executed the above instrument; that s/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that s/he signed her/his name thereto by like order.

[*Signature of Notary Public*]

[*Name of Notary Public*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.103. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

*[10 CSR 20-11.104] **10 CSR 26-3.104*** **Substitution of Financial Assurance Mechanisms by Owner or Operator**. The commission is moving the rule and amending sections (1) and (2).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references.

(1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115**, provided that at all times s/he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093**.

(2) After obtaining alternate financial assurance as specified in *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115**, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.104. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

*[10 CSR 20-11.105] **10 CSR 26-3.105*** **Cancellation or Nonrenewal by a Provider of Financial Assurance**. The commission is moving the rule and amending subsection (1)(A) and section (2).

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, and amending rule references.

(1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Notice of termination shall comply with the following requirements:

(A) Termination of a guarantee, a surety bond**,** or a letter of credit shall not occur until one hundred twenty (120) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt; and

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in *[10 CSR 20-11.110]* **10 CSR 26-3.110**, the owner or operator shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty (60) days after receipt of the notice of termination, the owner or operator shall notify the director of the failure and submit—

(C) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with *[10 CSR 20-11.107]***10 CSR 26-3.107**(2).

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.105. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.106] ***10 CSR 26-3.106*** **Reporting by Owner or Operator**. The commission is moving the rule and amending sections (1)–(3).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references.

(1) An owner or operator shall submit the appropriate forms listed in *[10 CSR 20-11.107]***10 CSR 26-3.107**(2) documenting current evidence of financial responsibility to the director—

(A) Within thirty (30) days after the owner or operator identifies a release from an underground storage tank (UST) required to be reported under *[10 CSR 20-10.053 or 10 CSR 20-10.061]* **10 CSR 26-2.053 or 10 CSR 26-2.071**;

(B) If the owner or operator fails to obtain alternate coverage as required by *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** within thirty (30) days after the owner or operator receives notice of—

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming a provider of financial assurance as a debtor;

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

3. Failure of a guarantor to meet the requirements of the financial test;

4. Other incapacity of a provider of financial assurance; or

(C) As required by *[10 CSR 20-11.095]***10 CSR 26-3.095**(7) and *[10 CSR 20-11.105]***10 CSR 26-3.105**(2).

(2) An owner or operator shall certify compliance with the financial responsibility requirements of *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** as specified in the new tank notification form (see *[10 CSR 20-10.022]* **10 CSR 26-2.022**) when notifying the department of the installation of a new UST under *[10 CSR 20-10.022]* **10 CSR 26-2.022**.

(3) The director may require an owner or operator to submit evidence of financial assurance as described in *[10 CSR 20-11.107]***10 CSR 26-3.107**(2) or other information relevant to compliance with *[10 CSR 20-11.090–10 CSR 20-11.115]***10 CSR 26-3.090–10 CSR 26-3.115** at any time.

AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] ***2000****. This rule originally filed as 10 CSR 20-11.106. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.107] ***10 CSR 26-3.107*** **Record** *[k]***Keeping**. The commission is moving the rule, amending sections (1) and (2), and adding Form 9 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references, and adding Form 9 to the rule.

(1) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under *[10 CSR 20-11.090]* **10 CSR 26-3.090** through *[10 CSR 20-11.115]* **10 CSR 26-3.115** for an underground storage tank (UST) until released from the requirements of *[10 CSR 20-11.090]* **10 CSR 26-3.090** through *[10 CSR 20-11.115]* **10 CSR 26-3.115** under *[10 CSR 20-11.109]* **10 CSR 26-3.109**. An owner or operator shall maintain this evidence at the UST site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

(2) An owner or operator shall maintain the following types of evidence of financial responsibility:

(A) An owner or operator using an assurance mechanism specified in *[10 CSR 20-11.095]* **10 CSR 26-3.095** through *[10 CSR 20-11.100]* **10 CSR 26-3.100** or *[10 CSR 20-11.102]* **10 CSR 26-3.102** or *[10 CSR 20-11.112]* **10 CSR 26-3.112** through *[10 CSR 20-11.115]* **10 CSR 26-3.115** shall maintain a copy of the instrument worded as specified;

(D) A local government owner or operator using a local government guarantee under *[10 CSR 20-11.114]***10 CSR 26-3.114**(4) shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement;

(E) A local government owner or operator using the local government bond rating test under *[10 CSR 20-11.112]* **10 CSR 26-3.112** shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's;

(F) A local government owner or operator using the local government guarantee under *[10 CSR 20-11.114]* **10 CSR 26-3.114**, where the guarantor's demonstration of financial responsibility relies on the bond rating test under *[10 CSR 20-11.112]* **10 CSR 26-3.112**, shall maintain a copy of the guarantor's bond rating published within the last twelve (12) months by Moody's or Standard & Poor's;

(H) An owner or operator covered by the Petroleum Storage Tank Insurance Fund must maintain on file a copy of any evidence of coverage supplied by or required by the department under *[10 CSR 20-11.101(1)]* **10 CSR 20-11.101(1)**;

(I) An owner or operator using a local government fund under *[10 CSR 20-11.115]* **10 CSR 26-3.115** shall maintain the following documents:

1. A copy of the state constitutional provision or local government's statute, charter, ordinance**,** or order dedicating the fund;

2. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under *[10 CSR 20-11.115]***10 CSR 26-3.115**(1)(C) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year**,** and the closing balance in the fund; and

3. If the fund is established under *[10 CSR 20-11.115]***10 CSR 26-3.115**(1)(C) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under *[10 CSR 20-11.115]***10 CSR 26-3.115** (1)(C)1.) or attestation by the state attorney general as specified under *[10 CSR 20-11.115]***10 CSR 26-3.115**(1)(C)2.;

(K) An owner or operator using an assurance mechanism specified in *[10 CSR 20-11.095]* **10 CSR 26-3.095** through *[10 CSR 20-11.102]* **10 CSR 26-3.102** or *[10 CSR 20-11.112]* **10 CSR 26-3.112** through *[10 CSR 20-11.115]* **10 CSR 26-3.115** shall maintain an updated copy of a certification of financial responsibility worded as specified in *[10 CSR 20-11 Appendix,]* Form 9 *[(see 10 CSR 20-11.115)]***, included herein**. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

Form 9—Certification of Financial Responsibility

The following text should be used to comply with the requirements of 10 CSR 26-3.107(2)(K) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Certification of Financial Responsibility

[*Owner or operator*] hereby certifies that it is in compliance with the requirements of 10 CSR 26-3.090–10 CSR 26-3.115.
The financial assurance mechanism(s) used to demonstrate financial responsibility under 10 CSR 26-3.090–10 CSR 26-3.115 is (are) as follows:
[*For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage, and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases"or "accidental releases."*]

[*Signature of owner or operator*]

[*Name of owner or operator*]

[*Title*]

[*Date*]

[*Signature of witness or notary*]

[*Name of witness or notary*]

[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [(1994)] **2000** and **section** 319.129**,** [and 644.026,] RSMo [(Cum. Supp. 1996)] **Supp. 2010**. This rule originally filed as 10 CSR 20-11.107. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

*[10 CSR 20-11.108] **10 CSR 26-3.108*** **Drawing on Financial Assurance Mechanisms**. The commission is moving the rule, amending sections (1), (2), and (4), and adding Form 10 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, amending rule references, and adding Form 10 to the rule.

(1) Except as specified in section (4) of this rule, the director shall require the guarantor, surety**,** or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if—

(A) The following conditions exist:

1. The owner or operator fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit**,** or, as applicable, other financial assurance mechanism; and

2. The director determines or suspects that a release from an underground storage tank (UST) covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the director pursuant to *[10 CSR 20-10.050–10 CSR 20-10.067]* **10 CSR 26-2.050–10 CSR 26-2.083** of a release from a UST covered by the mechanism; or

(2) The director may draw on a standby trust fund when—

(A) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required in *[10 CSR 20-10.060–10 CSR 20-10.067]* **10 CSR 26-2.060–10 CSR 26-2.083**; or

(B) The director has received either—

1. Certification from the owner or operator and the third-party liability claimant(s), and from attorneys representing the owner or operator and the third-party liability claimant(s), that a third-party liability claim should be paid. The certification shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 10 *[(see 10 CSR 20-11.115)]***, included herein**; or

2. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a UST covered by financial assurance under *[10 CSR 20-11.095–10 CSR 20-11.115]* **10 CSR 26-3.095–10 CSR 26-3.115** and the director determines that the owner or operator has not satisfied the judgment.

(4) A governmental entity acting as guarantor under *[10 CSR 20-11.114]***10 CSR 26-3.114**(7), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in *[10 CSR 20-11.108]***10 CSR 26-3.108**(1)–(3).

Form 10—Certification of Valid Claim

The certification of valid claim must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [*insert owner or operator*] and [*insert name and address of third-party claimant*], hereby certify that the claim of bodily injury (and/or) property damage caused by an accidental release arising from operating [*owner's or operator's*] underground storage tank should be paid in the amount of $[ ].

[*Signatures*]

[*Owner or Operator*]

[*Attorney for Owner or Operator*]

[*Notary*]

[*Date*]

[*Signatures*]

[*Claimant(s)*]

[*Attorney(s) for claimants(s)*]

[*Notary*]

[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.108. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.109] ***10 CSR 26-3.109*** **Release From the Requirements**. The commission is moving the rule and amending section (1).

PURPOSE: The commission is moving the rule to 10 CSR 26-3 and amending rule references.

(1) An owner or operator is no longer required to maintain financial responsibility under *[10 CSR 20-11.090–10 CSR 20-11.115]* **10 CSR 26-3.090–10 CSR 26-3.115** for an underground storage tank (UST) after the tank has been properly closed, or if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by *[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064**.

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.109. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.110] ***10 CSR 26-3.110*** **Bankruptcy or Other Incapacity of Owner or Operator, or Provider of Financial Assurance**. The commission is moving the rule and amending sections (1)–(5).

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, and amending rule references.

(1) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of the commencement and submit the appropriate forms listed in *[10 CSR 20-11.107]***10 CSR 26-3.107**(2) documenting current financial responsibility.

(2) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming a guarantor providing financial assurance as debtor, this guarantor shall notify the owner or operator by certified mail of the commencement as required under the terms of the guarantee specified in *[10 CSR 20-11.096]* **10 CSR 26-3.096**.

(3) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming a local government owner or operator as debtor, the local government owner or operator shall notify the director by certified mail of the commencement and submit the appropriate forms listed in *[10 CSR 20-11.107]***10 CSR 26-3.107**(2) documenting current financial responsibility.

(4) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming a guarantor providing a local government financial assurance as debtor, this guarantor shall notify the local government owner or operator by certified mail of the commencement as required under the terms of the guarantee specified in *[10 CSR 20-11.106]* **10 CSR 26-3.106**.

(5) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed

to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond**,** or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in *[10 CSR 20-11.090]* **10 CSR 26-3.090** through *[10 CSR 20-11.115]* **10 CSR 26-3.115** within thirty (30) days after receiving notice of the event. If the owner or operator does not obtain alternate coverage within thirty (30) days after notification, s/he shall notify the director.

*AUTHORITY: section[s] 319.114, RSMo [(1994) and and 644.026, RSMo (Cum. Supp. 1996)] **2000 and section 319.129, RSMo Supp. 2010**. This rule originally filed as 10 CSR 20-11.110. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.111] ***10 CSR 26-3.111*** **Replenishment of Guarantees, Letters of Credit, or Surety Bonds**. The commission is moving the rule and amending sections (1) and (2).

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, and amending rule references.

(1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit**,** or surety bond and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator, by the anniversary date of the financial mechanism from which the funds were drawn shall—

(2) For purposes of this rule, the full amount of coverage required is the amount of coverage to be provided by *[10 CSR 20-11.093]* **10 CSR 26-3.093**. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.111. Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.112] ***10 CSR 26-3.112*** **Local Government Bond Rating Test**. The commission is moving the rule, amending sections (1), (2), and (4)–(6), and adding Forms 11 and 12 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references, and adding Forms 11 and 12 to the rule.

(1) A general purpose local government owner or operator, local government, or both, serving as a guarantor may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by having a currently outstanding issue(s) of general obligation bonds of one (1) million dollars or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A**,** or Baa, or a Standard & Poor's rating of AAA, AA, A**,** or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(2) A local government owner or operator or local government serving as a guarantor that 1) is not a general purpose local government

and 2) does not have the legal authority to issue general obligation bonds may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by—

(B) Having a Moody's rating of Aaa, Aa, A**,** or Baa, or a Standard & Poor's rating of AAA, AA, A**,** or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(4) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator, guarantor, or both, shall sign a letter worded as specified in *[10 CSR 20-11 Appendix,]* Form 11 *[(see 10 CSR 20-11.115)]***, included herein**.

(5) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator, guarantor, or both, other than a general purpose government shall sign a letter worded as specified in *[10 CSR 20-11 Appendix,]* Form 12 *[(see 10 CSR 20-11.115)]***, included herein**.

(6) The director may require reports of financial condition at any time from the local government owner or operator, local government guarantor, or both. If the director finds, on the basis of the reports or other information, that the local government owner or operator, guarantor, or both, no longer meets the local government bond rating test requirements of *[10 CSR 20-11.112]* **10 CSR 26-3.112**, the local government owner or operator shall obtain alternative coverage within thirty (30) days after notification of the finding.

Wording of Financial Assurance Instruments
Form 11—General Purpose Local Government Bond Rating Test

The following text should be used to comply with the requirements of 10 CSR 26-3.112(4) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [*insert: name and address of local government owner or operator, or guarantor*]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"*] caused by [*insert: "sudden accidental releases" and/or "nonsudden accidental releases"*] in the amount of at least [*insert: dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [*List for each facility: the name and address of the facility where tanks are assured by the bond rating test*].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [*name of local government owner or operator, or guarantor*] to demonstrate financial responsibility are as follows: [*complete table*]
Issue Date
Maturity Date
Outstanding Amount
Bond Rating
Rating Agency [*Moody's or Standard & Poor's*]

The total outstanding obligation of [*insert amount*], excluding refunded bond issues, exceeds the minimum amount of one (1) million dollars. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 10 CSR 26-3.112(4) as the regulations were constituted on the date shown immediately below.

[*Signature*]

[*Name*]

[*Title*]

[*Date*]

Form 12—Local Government Bond Rating Test

The following text should be used to comply with the requirements of 10 CSR 26-3.112(5) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [*insert: name and address of local government owner or operator, or guarantor*]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"*] caused by [*insert: "sudden accidental releases" and/or "nonsudden accidental releases"*] in the amount of at least [*insert: dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [*List for each facility: the name and address of the facility where tanks are assured by the bond rating test*].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [*name of local government owner or operator, or guarantor*] to demonstrate financial responsibility are as follows: [*complete table*]

Issue Date
Maturity Date
Outstanding Amount
Bond Rating
Rating Agency [*Moody's or Standard & Poor's*]

The total outstanding obligation of [*insert amount*], excluding refunded bond issues, exceeds the minimum amount of one (1) million dollars. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 10 CSR 26-3.112(5) as the regulations were constituted on the date shown immediately below.

[*Signature*]

[*Name*]

[*Title*]

[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.112. Original rule filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.113] ***10 CSR 26-3.113*** **Local Government Financial Test**. The commission is moving the rule, amending sections (1)–(3) and (5), and adding Form 13 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, amending rule references, and adding Form 13 to the rule.

(1) A local government owner or operator may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by passing the financial test specified in this rule. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges.

(2) To pass the local government financial test, the owner or operator must meet the criteria of subsections (2)(B) and (C) of this rule based on year-end financial statements for the latest completed fiscal year:

(A) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year*[—]***:**

1. Total revenues. Consists of the sum of general fund operating and nonoperating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, and the like), intergovernmental revenues (restricted and unrestricted)**,** and total revenues from all other governmental funds including enterprise, debt service, capital projects**,** and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments**,** and issuance of debt.

2. Total expenditures. Consists of the sum of general fund operating and nonoperating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal**,** and total expenditures from all other governmental funds including enterprise, debt service, capital projects**,** and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

3. Local revenues. Consists of total revenues (as defined in paragraph (2)(A)1. of this rule) minus the sum of all transfers from other governmental entities, including all monies received from federal, state**,** or local government sources.

4. Debt service. Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments**,** and interest-bearing warrants. Excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

5. Total funds. Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects**,** and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes**,** and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other nonsecurity assets.

6. Population consists of the number of people in the area served by the local government.

(3) To demonstrate that it meets the financial test under section (2) of this rule, the chief financial officer of the local government owner or operator*[,]* shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12)-month period for which financial statements used to support the financial test are prepared, a letter worded as specified in *[10 CSR 20-11 Appendix,]* Form 13 *[(see 10 CSR 20-11.115)]***, included herein**.

(5) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of the reports or other information, that the local government owner or operator no longer meets the financial test requirements of *[10 CSR 20-11.113]***10 CSR 26-3.113**(2) and (3), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of the finding.

Form 13—Local Government Financial Test

The following text should be used to comply with the requirements of 10 CSR 26-3.113(3) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [*insert: name and address of the owner or operator*]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"*] caused by [*insert: "sudden accidental releases" and/or "nonsudden accidental releases"*] in the amount of at least [*insert: dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [*List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022*].

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

Part I: Basic Information

1. Total Revenues
   a. Revenues (dollars)

   Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and nonoperating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
   b. Subtract interfund transfers (dollars)
   c. Total Revenues (dollars)
2. Total Expenditures
   a. Expenditures (dollars)

Value consists of the sum of general fund operating and nonoperating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
   b. Subtract interfund transfers (dollars)
   c. Total Expenditures (dollars)
3. Local Revenues
   a. Total Revenues (from 1c) (dollars)
   b. Subtract total intergovernmental transfers (dollars)
   c. Local Revenues (dollars)
4. Debt Service
   a. Interest and fiscal charges (dollars)
   b. Add debt retirement (dollars)
   c. Total Debt Service (dollars)
5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

Part II: Application of Test

7. Total Revenues to Population
   a. Total Revenues (from 1c)
   b. Population (from 6)
   c. Divide 7a by 7b
   d. Subtract 417
   e. Divide by 5.212
   f. Multiply by 4.095
8. Total Expenses to Population
   a. Total Expenses (from 2c)
   b. Population (from 6)
   c. Divide 8a by 8b
   d. Subtract 524
   e. Divide by 5401
   f. Multiply by 4.095

9. Local Revenues to Total Revenues
   a. Local Revenues (from 3c)
   b. Total Revenues (from 1c)
   c. Divide 9a by 9b
   d. Subtract .695
   e. Divide by .205
   f. Multiply by 2.840
10. Debt Services to Population
   a. Debt Service (from 4d)
   b. Population (from 6)
   c. Divide 10a by 10b
   d. Subtract 51
   e. Divide by 1038
   f. Multiply by -1.866
11. Debt Service to Total Revenues
   a. Debt Service (from 4d)
   b. Total Revenues (from 1c)
   c. Divide 11a by 11b
   d. Subtract .068
   e. Divide by .259
   f. Multiply by -3.533
12. Total Revenues to Total Expenses
   a. Total Revenues (from 1c)
   b. Total Expenses (from 2c)
   c. Divide 12a by 12b
   d. Subtract .910
   e. Divide by .899
   f. Multiply by 3.458
13. Funds Balance to Total Revenues
   a. Total Funds (from 5)
   b. Total Revenues (from 1c)
   c. Divide 13a by 13b
   d. Subtract .891
   e. Divide by 9.156
   f. Multiply by 3.270
14. Funds Balance to Total Expenses
   a. Total Funds (from 5)
   b. Total Expenses (from 2c)
   c. Divide 14a by 14b
   d. Subtract .866
   e. Divide by 6.409
   f. Multiply by 3.270
15. Total Funds to Population
   a. Total Funds (from 5)
   b. Population (from 6)
   c. Divide 15a by 15b
   d. Subtract 270
   e. Divide by 4548
   f. Multiply by 1.866
16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 10 CSR 26-3.113(3) as the regulations were constituted on the date shown immediately below.

[*Signature*]

[*Name*]

[*Title*]

[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.113. Original rule filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

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PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

[10 CSR 20-11.114] ***10 CSR 26-3.114*** **Local Government Guarantee**. The commission is moving the rule, amending sections (1)–(7), and adding Forms 14, 15, 16, and 17 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, amending rule references, and adding Forms 14, 15, 16, and 17 to the rule.

(1) A local government owner or operator may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by obtaining a guarantee that conforms to the requirements of this rule. The guarantor must be either the state in which the local government owner or operator is located or a local government having a substantial governmental relationship with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall demonstrate that it meets the—

(A) Bond rating test requirement of *[10 CSR 20-11.112]* **10 CSR 26-3.112** and deliver a copy of the chief financial officer's letter as contained in *[10 CSR 20-11.112]***10 CSR 26-3.112**(4) or (5) to the local government owner or operator;

(B) Worksheet test requirements of *[10 CSR 20-11.113]* **10 CSR 26-3.113** and deliver a copy of the chief financial officer's letter as contained in *[10 CSR 20-11.113]***10 CSR 26-3.113**(3) to the local government owner or operator; or

(C) Local government fund requirements of *[10 CSR 20-11.115]***10 CSR 26-3.115**(1)(A), (B)**,** or (C) and deliver a copy of the chief financial officer's letter as contained in *[10 CSR 20-11.115]* **10 CSR 26-3.115** to the local government owner or operator.

(2) If the local government guarantor is unable to demonstrate financial assurance under any of *[10 CSR 20-11.112]* **10 CSR 26-3.112**, *[10 CSR 20-11.113]* **10 CSR 26-3.113**, **or** *[10 CSR 20-11.115]***10 CSR 26-3.115**(1)(A), (B)**,** or (C), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in *[10 CSR 20-11.110]***10 CSR 26-3.110**(5).

(3) The guarantee agreement shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 14 or 15 *[(see 10 CSR 20-11.115)]***, included herein**, depending on which of the following alternative guarantee arrangements is selected, if in the default or incapacity of the owner or operator, the guarantor guarantees to—

(A) Fund a standby trust as directed by the director, the guarantee shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 14 *[(see 10 CSR 20-11.115)]***, included herein**;

(B) Make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 15 *[(see 10 CSR 20-11.115)]***, included herein**.

(4) If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 14 *[(see 10 CSR 20-11.115)]***, included herein**.

(5) If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 15 *[(see 10 CSR 20-11.115)]***, included herein**.

(6) If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 16 *[(see 10 CSR 20-11.115)]***, included herein**.

(7) If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in *[10 CSR 20-11 Appendix,]* Form 17 *[(see 10 CSR 20-11.115)]***, included herein**.

Form 14—Local Government Guarantee With Standby Trust Made by a State

The following text should be used to comply with the requirements of 10 CSR 26-3.114(4) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a State

Guarantee made this [*date*] by [*name of state*], herein referred to as guarantor, to [*the state implementing agency*] and to any and all third parties, and obligees, on behalf of [*local government owner or operator*].

Recitals

1. Guarantor is the state.

2. [*Local government owner or operator*] owns or operates the following underground storage tank(s) covered by this guarantee: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to I0 CSR 26-2.022, and the name and address of the facility*]. This guarantee satisfies 10 CSR 26-3.090–10 CSR 26-3.115 requirements for assuring funding for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the above-identified underground storage tank(s) in the amount of [*insert dollar amount*] per occurrence and [*insert dollar amount*] annual aggregate.

3. Guarantor guarantees to [*implementing agency*] and to any and all third parties that:

In the event that [*local government owner or operator*] fails to provide alternative coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the [*director of the implementing agency*] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [*director*] shall fund a standby trust fund in accordance with the provisions of 10 CSR 26-3.108, in an amount not to exceed the coverage limits specified above.

In the event that the [*director*] determines that [*local government owner or operator*] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, the guarantor upon written instructions from the [*director*] shall fund a standby trust fund in accordance with the provisions of 10 CSR 26-3.108, in an amount not to exceed the coverage limits specified above.

If [*owner or operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden"*] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from the injury or damage, the guarantor, upon written instructions from the [*director*], shall fund a standby trust in accordance with the provisions of 10 CSR 26-3.108 to satisfy the judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees to notify [*owner or operator*] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code* naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

5. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*owner or operator*] pursuant to 10 CSR 26-2 and 3.

6. Guarantor agrees to remain bound under this guarantee for so long as [*local government owner or operator*] must comply with the applicable financial responsibility requirements of 10 CSR 26-3.090–10 CSR 26-3.115 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*owner or operator*], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the notice by [*owner or operator*], as evidenced by the return receipt.

7. The guarantor's obligation does not apply to any of the following:

A. Any obligation of [*local government owner or operator*] under a Workers' Compensation, disability benefits, or unemployment compensation law or other similar law;

B. Bodily injury to an employee of [*insert: local government owner or operator*] arising from, and in the course of, employment by [*insert: local government owner or operator*];

C. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

D. Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [*insert: local government owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

E. Bodily injury or property damage for which [*insert owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

8. Guarantor expressly waives notice of acceptance of this guarantee by [*the implementing agency*], by any or all third parties, or by [*local government owner or operator*].

I hereby certify that the wording of this guarantee is identical to the wording specified in 10 CSR 26-3.114(4) as the rules were constituted on the effective date shown immediately below.

Effective date:

[*Name of guarantor*]

[*Authorized signature for guarantor*]

[*Name of person signing*]

[*Title of person signing*]

Signature of witness or notary:

Form 15—Local Government Guarantee With Standby Trust Made by a Local Government

The following text should be used to comply with the requirements of 10 CSR 26-3.114(5) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made By a Local Government

Guarantee made this [*date*] by [*name of guaranteeing entity*], a local government organized under the laws of [*name of state*], herein referred to as guarantor, to [*the state implementing agency*] and to any and all third parties, and obligees, on behalf of [*local government owner or operator*].

Recitals

1. Guarantor meets or exceeds [*select one: the local government bond rating test requirements of 10 CSR 26-3.112, the local government financial test requirements of 10 CSR 26-3.113, or the local government fund under 10 CSR 26-3.115(1)(A), (B), or (C)*].

2. [*Local government owner or operator*] owns or operates the following underground storage tank(s) covered by this guarantee: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022, and the name and address of the facility*]. This guarantee satisfies 10 CSR 26-3.090–10 CSR 26-3.115 requirements for assuring funding for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases;" if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the above-identified underground storage tank(s) in the amount of [*insert dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate.

3. Incident to our substantial governmental relationship with [*local government owner or operator*], guarantor guarantees to [*implementing agency*] and to any and all third parties that:

In the event that [*local government owner or operator*] fails to provide alternative coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and [*the director of the implementing agency*] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from [*the director*] shall fund a standby trust fund in accordance with the provisions of 10 CSR 26-3.108, in an amount not to exceed the coverage limits specified above.

In the event that [*the director*] determines that [*local government owner or operator*] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, the guarantor upon written instructions from [*the director*] shall fund a standby trust fund in accordance with the provisions of 10 CSR 26-3.108, in an amount not to exceed the coverage limits specified above.

If [*owner or operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden"*] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from the injury or damage, the guarantor, upon written instructions from [*the director*], shall fund a standby trust in accordance with the provisions of 10 CSR 26-3.108 to satisfy the judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in section 10 CSR 26-3.096(2), guarantor shall send within one hundred twenty (120) days of the failure, by certified mail, notice to [*local government owner or operator*], as evidenced by the return receipt.

5. Guarantor agrees to notify [*owner or operator*] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code* naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*owner or operator*] pursuant to 10 CSR 26-2 and 3.

7. Guarantor agrees to remain bound under this guarantee for so long as [*local government owner or operator*] must comply with the applicable financial responsibility requirements of 10 CSR 26-3.090–10 CSR 26-3.115 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*owner or operator*], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the notice by [*owner or operator*], as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

A. Any obligation of [*local government owner or operator*] under a Workers' Compensation, disability benefits, or unemployment compensation law or other similar law;

B. Bodily injury to an employee of [*insert: local government owner or operator*] arising from, and in the course of, employment by [*insert: local government owner or operator*];

C. Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft;

D. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*insert: local government owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

E. Bodily injury or property damage for which [*insert: owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

9. Guarantor expressly waives notice of acceptance of this guarantee by [*the implementing agency*], by any or all third parties, or by [*local government owner or operator*].

I hereby certify that the wording of this guarantee is identical to the wording specified in 10 CSR 26-3.114(5) as the rules were constituted on the effective date shown immediately below.

Effective date:

[*Name of guarantor*]

[*Authorized signature for guarantor*]

[*Name of person signing*]

[*Title of person signing*]

Signature of witness or notary:

Form 16—Local Government Guarantee Without Standby Trust Made by a State

The following text should be used to comply with the requirements of 10 CSR 26-3.114(6) as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a State

Guarantee made this [*date*] by [*name of state*], herein referred to as guarantor, to [*the state implementing agency*] and to any and all third parties, and obligees, on behalf of [*local government owner or operator*].

Recitals

1. Guarantor is the state.

2. [*Local government owner or operator*] owns or operates the following underground storage tank(s) covered by this guarantee: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022, and the name and address of the facility.*]. This guarantee satisfies 10 CSR 26-3.090–10 CSR 26-3.115 requirements for assuring funding for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases;" if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the above-identified underground storage tank(s) in the amount of [*insert: dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate.

3. Guarantor guarantees to [*implementing agency*] and to any and all third parties and obligees that:

In the event that [*local government owner or operator*] fails to provide alternative coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the [*director of the implementing agency*] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from [*the director*] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that [*the director*] determines that [*local government owner or operator*] has failed to perform corrective action for releases arising out of the operation of above-identified tank(s) in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, the guarantor upon written instructions from [*the director*] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [*owner or operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden" accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from the injury or damage, the guarantor, upon written instructions from* [*the director*], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

4. Guarantor agrees to notify [*owner or operator*] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

5. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*owner or operator*] pursuant to 10 CSR 26-2 and 3.

6. Guarantor agrees to remain bound under this guarantee for so long as [*local government owner or operator*] must comply with the applicable financial responsibility requirements of 10 CSR 26-3.090–10 CSR 26-3.115 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*owner or operator*], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the notice by [*owner or operator*], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

7. The guarantor's obligation does not apply to any of the following:

A. Any obligation of [*local government owner or operator*] under a workers' compensation disability benefits or unemployment compensation law or other similar law;

B. Bodily injury to an employee of [*local government owner or operator*] arising from, and in the course of, employment by [*local government owner or operator*];

C. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

D. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*local government owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

E. Bodily injury or property damage for which [*owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

8. Guarantor expressly waives notice of acceptance of this guarantee by [*the implementing agency*], by any or all third parties, or by [*local government owner or operator*].

I hereby certify that the wording of this guarantee is identical to the wording specified in 10 CSR 26-3.114(6) as the regulations were constituted on the effective date shown immediately below.

Effective date:

[*Name of guarantor*]

[*Authorized signature for guarantor*]

[*Name of person signing*]

[*Title of person signing*]

Signature of witness or notary:

Form 17—Local Government Guarantee Without Standby Trust Made by a Local Government

The following text should be used to comply with the requirements of 10 CSR 26-3.114(7) as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [*date*] by [*name of guaranteeing entity*], a local government organized under the laws of [*name of state*], herein referred to as guarantor, to [*the state implementing agency*] and to any and all third parties, and obligees, on behalf of [*local government owner or operator*].

Recitals

1. Guarantor meets or exceeds [*select one: the local government bond rating test requirements of 10 CSR 26-3.112, the local government financial test requirements of 10 CSR 26-3.113, the local government fund under 10 CSR 26-3.115(1)(A), (B), or (C)*].

2. [*Local government owner or operator*] owns or operates the following underground storage tank(s) covered by this guarantee: [*List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR 26-2.022, and the name and address of the facility*.] This guarantee satisfies 10 CSR 26-3.090–10 CSR 26-3.115 requirements for assuring funding for [*"taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location*] arising from operating the above-identified underground storage tank(s) in the amount of [*dollar amount*] per occurrence and [*dollar amount*] annual aggregate.

3. Incident to our substantial governmental relationship with [*local government owner or operator*], guarantor guarantees to [*implementing agency*] and to any and all third parties and obligees that:

In the event that [*local government owner or operator*] fails to provide alternative coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the [*director of the implementing agency*] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from [*the director*] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that [*the director*] determines that [*local government owner or operator*] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, the guarantor upon written instructions from [*the director*] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [*owner or operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden"*] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from the injury or damage, the guarantor, upon written instructions from [*the director*], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

4. Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism, guarantor shall send within one hundred twenty (120) days of the failure, by certified mail, notice to [*local government owner or operator*], as evidenced by the return receipt.

5. Guarantor agrees to notify [*owner or operator*] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code* naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*owner or operator*] pursuant to 10 CSR 26-2 and 3.

7. Guarantor agrees to remain bound under this guarantee for so long as [*local government owner or operator*] must comply with the applicable financial responsibility requirements of 10 CSR 26-3.090–10 CSR 26-3.115 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*owner or operator*], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the notice by [*owner or operator*], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

8. The guarantor's obligation does not apply to any of the following:

A. Any obligation of [*local government owner or operator*] under a workers' compensation disability benefits or unemployment compensation law or other similar law;

B. Bodily injury to an employee of [*local government owner or operator*] arising from, and in the course of, employment by [*local government owner or operator*];

C. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

D. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*local government owner or operator*] that is not the direct result of a release from a petroleum underground storage tank;

E. Bodily injury or property damage for which [*owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 10 CSR 26-3.093.

9. Guarantor expressly waives notice of acceptance of this guarantee by [*the implementing agency*], by any or all third parties, or by [*local government owner or operator*].

I hereby certify that the wording of this guarantee is identical to the wording specified in 10 CSR 26-3.114(7) as the regulations were constituted on the effective date shown immediately below.

Effective date:

[*Name of guarantor*]

[*Authorized signature for guarantor*]

[*Name of person signing*]

[*Title of person signing*]

Signature of witness or notary:

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.114. Original rule filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[11]3*—Underground Storage Tanks—Financial Responsibility

PROPOSED AMENDMENT

*[10 CSR 20-11.115] **10 CSR 26-3.115*** **Local Government Fund**. The commission is moving the rule, amending sections (1) and (2), deleting the forms following the rule in the *Code of State Regulations*, and adding Form 18 to the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-3, correcting punctuation, amending rule references, and adding Form 18 to the rule.

(1) A local government owner or operator may satisfy the requirements of *[10 CSR 20-11.093]* **10 CSR 26-3.093** by establishing a dedicated fund account that conforms to the requirements of this rule. Except as specified in subsection (1)(B) of this rule, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one (1) of the following requirements:

(A) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance**,** or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs) and is funded for the full amount of coverage required under *[10 CSR 20-11.093]* **10 CSR 26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provides the remaining coverage; or

(B) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs*[,]* and is funded for five (5) times the full amount of coverage required under *[10 CSR 20-11.093]* **10 CSR 26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage. If the fund is funded for less than five (5) times the amount of coverage required under *[10 CSR 20-11.093]* **10 CSR 26-3.093**, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth (1/5) the amount in the fund; or

(C) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance**,** or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. A payment is made to the fund once every year for seven (7) years until the fund is fully-funded. This seven (7)-year period is referred to as the pay-in-period. The amount of each payment shall be determined by this formula:

$$\frac{TF - CF}{Y}$$

where:
TF = the total required financial assurance for the owner or operator;
CF = the current amount in the fund; and
Y = the number of years remaining in the pay-in-period.

1. The local government owner or operator has available bonding authority, approved through voter referendum (if this approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; or

2. The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(2) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator, guarantor, or both, shall sign a letter worded exactly as specified in *[10 CSR 20-11 Appendix,]* Form 18 *[(see 10 CSR 20-11.115)]***, included herein**.

Form 18—Local Government Fund

The following text should be used to comply with the requirements of 10 CSR 26-3.115(1)(D) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [*insert: name and address of local government owner or operator, or guarantor*]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"*] caused by [*insert: "sudden accidental releases" and/or "nonsudden accidental releases"*] in the amount of at least [*insert: dollar amount*] per occurrence and [*insert: dollar amount*] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [*List for each facility: the name and address of the facility where tanks are assured by the local government fund*].

[*Insert: "The local government fund is funded for the full amount of coverage required under 10 CSR 26-3.093, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage," or "The local government fund is funded for ten (10) times the full amount of coverage required under 10 CSR 26-3.093, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage," or "A payment is made to the fund once every year for seven (7) years until the fund is fully-funded*] and [*name of local government owner or operator*] has [*available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven (7) years until the fund is fully-funded and I have attached a letter signed by the state attorney general stating that 1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and 2) that prior voter approval is not necessary before use of the bonding authority"*].

The details of the local government fund are as follows: Amount in Fund (market value of fund of close of last fiscal year):

[*If fund balance is incrementally funded as specified in 10 CSR 26-3.107(1)(C), insert:*

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period:]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 10 CSR 26-3.115(2) as the regulations were constituted on the date shown immediately below.

[*Signature*]

[*Name*]

[*Title*]

[*Date*]

*AUTHORITY: section[s] 319.114, RSMo [(Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993)] **2000**. This rule originally filed as 10 CSR 20-11.115. Original rule filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[13]4*—Underground Storage Tanks—Administrative Penalties

PROPOSED AMENDMENT

[10 CSR 20-13.080] ***10 CSR 26-4.080*** **Administrative Penalty Assessment**. The commission is moving the rule and amending subsection (2)(A).

PURPOSE: The commission is moving the rule to 10 CSR 26-4 and updating rule references in the text.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in *[10 CSR 20-10.012]* **10 CSR 26-2.012** and section 319.100, RSMo.

*AUTHORITY: sections 319.137 **and 319.139, RSMo Supp. 2010** [and 644.026, RSMo Supp. 1998]. This rule originally filed as 10 CSR 20-13.080. Original rule filed Dec. 31, 1991, effective Aug. 6, 1992. Rescinded and readopted: Filed April 15, 1999, effective March 30, 2000. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[15]5*—Aboveground Storage Tanks—Release Response

PROPOSED AMENDMENT

[10 CSR 20-15.010] ***10 CSR 26-5.010*** **Applicability and Definitions**. The commission is proposing to move the rule.

PURPOSE: The commission is moving the rule to 10 CSR 26-5.

*AUTHORITY: section[s] 319.137 [and 644.026], RSMo [2000] **Supp. 2010**. This rule originally filed as 10 CSR 20-15.010. Original rule filed Sept. 13, 2001, effective May 30, 2002. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[15]5*—Aboveground Storage Tanks—Release Response

PROPOSED AMENDMENT

[10 CSR 20-15.020] ***10 CSR 26-5.020*** **Release Reporting and Initial Release Response Measures**. The commission is proposing to move the rule and amend section (9).

PURPOSE: The commission is moving the rule to 10 CSR 26-5 and updating rule references in section (9).

(9) Written Report. The owner or operator of the AST shall submit a written report on all activities required by this rule to the department within thirty (30) days of the date of discovery of the release. The report shall demonstrate compliance with all applicable requirements of this rule. Upon request, the department may allow another reasonable period of time for submission of the report. Upon review of this report, the department will determine whether the owner or operator must conduct a site characterization, as described in *[10 CSR 20-15.030]* **10 CSR 26-5.030**. If, in the judgment of the department, the information in the report is insufficient to adequately make this determination, the department may request additional information.

AUTHORITY: section[s] 319.137 [and 644.026], RSMo [2000] ***Supp. 2010****. This rule originally filed as 10 CSR 20-15.020. Original rule filed Sept. 13, 2001, effective May 30, 2002. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division *[20]26—[Clean Water Commission]* *Petroleum and Hazardous Substance Storage Tanks*
Chapter *[15]5*—Aboveground Storage Tanks—Release Response

PROPOSED AMENDMENT

[10 CSR 20-15.030] ***10 CSR 26-5.030*** **Site Characterization and Corrective Action**. The commission is proposing to move the rule and amend sections (1) and (2).

PURPOSE: The commission is moving the rule to 10 CSR 26-5 and amending rule references in sections (1) and (2).

(1) Site Characterization.

(A) At the request of the department in response to a release, the owner or operator of an AST shall conduct a site characterization to include a full investigation of the release, the release site and the surrounding area to determine the full extent and location of soils contaminated by the release and the presence and concentrations of contamination in the groundwater if the Initial Release Response Report submitted in compliance with *[10 CSR 20-15.020]* **10 CSR 26-5.020** documents any of the following:

1. Contaminated groundwater or surface water above action levels;
2. Contaminated soils above action levels;
3. Presence of free product; or
4. Some other characteristic determined by the department to require further investigation because of its potential to result in pollution of the waters of the state or a potential threat to human health and the environment.

(2) Site Characterization Reporting. A site characterization shall include, at a minimum, information about the site and the nature of the release. The site characterization report containing this information shall be submitted to the department within forty-five (45) days of date of the department's request to conduct site characterization in subsection (1)(A) of this rule. The department may approve an alternative reporting schedule. This information shall include, but is not limited to, the following:

(B) Data from available sources or site investigations concerning the following factors:

1. Surrounding land use;
2. The hydrogeologic characteristics of the site and the surrounding area;
3. Use and approximate locations of wells affected or potentially affected by the release;
4. Surface and subsurface soil conditions at the site and the immediate surrounding area;
5. Locations of subsurface utilities;
6. The proximity, quality, and current and potential future uses of nearby surface and groundwater; *[and]*
7. The potential effects of residual contamination on nearby surface and groundwater; and
8. Any additional relevant information assembled while carrying out the steps required in *[10 CSR 20-15.020]* **10 CSR 26-5.020** and this rule.

AUTHORITY: section[s] 319.137 [and 644.026], RSMo [2000] ***Supp. 2010****. This rule originally filed as 10 CSR 20-15.030. Original rule filed Sept. 13, 2001, effective May 30, 2002. Moved and amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous

Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 3—Hazardous Waste Management System: General

PROPOSED AMENDMENT

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information. The commission is proposing to amend sections (1) and (3).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 260, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 260, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, *[and the changes made at 71 FR 42928, July 28, 2006,]* are incorporated by reference, except for the changes made at 70 FR 53453, September 8, 2005**, and 73 FR 64667 to 73 FR 64788, October 30, 2008,** subject to the following additions, modifications, substitutions, or deletions. This rule does not incorporate any subsequent amendments or additions.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260–270, 273, and 279 and 49 CFR parts 40, 171–180, 383, 387, and 390–397.

(U) Definitions beginning with the letter U.

1. Universal waste means any of the hazardous wastes that are defined under the universal waste requirements of 10 CSR 25-16.273(2)(A).

2. Used oil.

A. The definition of used oil at 40 CFR 260.10 is amended to include, but not be limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for any of the following:

(I) Lubrication/cutting oil;

(II) Heat transfer;

(III) Hydraulic power; or

(IV) Insulation in dielectric transformers.

B. The definition of used oil at 40 CFR 260.10 is amended to exclude used petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under 10 CSR 25.)

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3–9 and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. USGS means United States Geological Survey.

4. U.S. importer means a United States-based person who is in corporate good standing with the U.S. state in which they are registered to conduct business and who will be assuming all generator responsibilities and liabilities specified in sections 260.350–260.430, RSMo**,** for wastes which the U.S. importer has arranged to be imported from a foreign country.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and section 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 4—Methods for Identifying Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-4.261 Methods for Identifying Hazardous Waste. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would*

add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 261, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 261, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, *[and the changes made at 71 FR 42928, July 28, 2006, and 72 FR 31185, June 6, 2007,]* are incorporated by reference, except for the changes made at 55 FR 50450, December 6, 1990, 56 FR 27332, June 13, 1991, 60 FR 7366, February 7, 1995, 63 FR 33823, June 19, 1998, *[and]* 70 FR 53453, September 8, 2005, **73 FR 64667 to 73 FR 64788, October 30, 2008, and 73 FR 77954, December 19, 2008**. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modifications of the regulations incorporated in section (1) of this rule. A person required to identify a hazardous waste shall comply with this section as it modifies 40 CFR part 261 as incorporated in this rule. (Comment: This section has been organized in order that all Missouri additions, changes, or deletions to any subpart of the federal regulation are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 261 subpart A will be located in subsection (2)(A) of this rule.)

(A) General. The following are changes to 40 CFR part 261 subpart A incorporated in this rule:

1. Material that is stored or accumulated in surface impoundments or waste piles is inherently waste-like as provided in 40 CFR 261.2(d) incorporated in this rule, and is a solid waste, regardless of whether the material is recycled;

2. A solid waste, as defined in 40 CFR 261.2, as incorporated in this rule, is a hazardous waste if it is a mixture of solid waste and one (1) or more hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, and has not been excluded from 40 CFR 261.3(a)(2), as incorporated in this rule, under 40 CFR 260.20 and 260.22, as incorporated in 10 CSR 25-3.260. However, mixtures of solid wastes and hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, are not hazardous wastes (except by application of 40 CFR part 261.3(a)(2)(i) or (ii), as incorporated in this rule) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is regulated under Chapter 644, RSMo, the Missouri Clean Water Law;

3. In Table 1 of 40 CFR 261.2, add an asterisk in column 3, row 6, Reclamation of Commercial Chemical Products listed in 40 CFR 261.33 and add the following additional footnote: "Note 2. Commercial chemical products listed in 40 CFR 261.33 are not solid wastes when the original manufacturer uses, reuses**,** or legitimately recycles the material in his/her manufacturing process";

4. *[Except as provided otherwise in 40 CFR 261.3(c)(2)(ii), as incorporated in this rule, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.);]* ***(Reserved)***

5. In addition to the requirements in 40 CFR 261.3 incorporated in this rule, hazardous waste may not be diluted solely for the purpose of rendering the waste nonhazardous unless dilution is warranted in an emergency response situation or where the dilution is part of a hazardous waste treatment process regulated or exempted under 10 CSR 25-7 or 10 CSR 25-9;

6. Fly ash that is not regulated under sections 260.200–260.245, RSMo, or sections 644.006–644.564, RSMo, or is not beneficially reused as allowed under 10 CSR 80-2.020(9)(B), and fails Toxicity Characteristic Leaching Procedure (TCLP) is not subject to the exclusion at 40 CFR 261.4(b)(4) and shall be disposed of in a permitted hazardous waste facility;

7. In 40 CFR 261.4(a)(8)(i) incorporated in this rule, substitute "is a totally enclosed treatment facility" for "through completion of reclamation is closed";

8. 40 CFR 261.4(a)(11) is not incorporated in this rule;

9. 40 CFR 261.4(a)(16) is not incorporated in this rule (Note: The paragraph at 40 CFR 261.4(a)(16) added by 63 FR 33823, June 19, 1998, is the paragraph not incorporated by 10 CSR 25-4.261(2)(A)9.);

10. Household hazardous waste which is segregated from the solid waste stream becomes a regulated hazardous waste upon acceptance by delivery at a commercial hazardous waste treatment, storage, or disposal facility. Any waste for which the commercial facility becomes the generator in this way shall not be subject to waste minimization requirements under 40 CFR 264.73(b)(9), as incorporated by 10 CSR 25-7.264(1), nor shall that facility be required to pay hazardous waste fees and taxes on that waste pursuant to 10 CSR 25-12.010;

11. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) as incorporated in this rule to the department along with the Generator's Hazardous Waste Summary Report required in 10 CSR 25-5.262(2)(D)1.;

12. The changes to 40 CFR 261.5, special requirements for hazardous waste generated by small quantity generators, incorporated in this rule are as follows:

A. The modification set forth in 10 CSR 25-3.260(1)(A)25. applies in this rule in addition to other modifications set forth;

B. 40 CFR 261.5(g)(2) is not incorporated in this rule;

C. A process, procedure, method, or technology is considered to be on-site treatment for the purposes of 40 CFR 261.5(f)(3) and 40 CFR 261.5(g)(3), as incorporated in this rule, only if it meets the following criteria:

(I) The process, procedure, method, or technology reduces the hazardous characteristic(s) and/or the quantity of a hazardous waste; and

(II) The process, procedure, method, or technology does not result in off-site emissions of any hazardous waste or constituent; and

D. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279.10(b)(3) as incorporated in 10 CSR 25-11.279;

13. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 261.6(a)(3)(i), as incorporated in this rule. The state may not assume authority from the Environmental Protection Agency (EPA) to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies;

14. 40 CFR 261.6(a)(4) is amended by adding the following sentence: "Used oil that exhibits a hazardous characteristic and that is released into the environment is subject to the requirements of 10 CSR 25-3, 4, 5, 6, 7, 8, 9, and 13.";

[15. Provided they are managed in accordance with the

requirements of 40 CFR 261.9 and 10 CSR 25-16.273, the following wastes are excluded from the requirements of 10 CSR 25-5.262 to 10 CSR 25-7.270:

A. Batteries as described in 40 CFR 273.2 and as modified in 10 CSR 25-16.273(2)(A)2.;

B. Pesticides as described in 40 CFR 273.3 and as modified in 10 CSR 25-16.273(2)(A)3.;

C. Mercury switches as described in 10 CSR 25-16.273(2)(A)4.A., mercury containing thermometers and manometers as described in 10 CSR 25-16.273(2)(A)4.B.; and

D. Lamps as described in 40 CFR 273.5.;]

15. ***(Reserved)***

16. Recyclable materials that meet the definition of used oil in 40 CFR 260.10 as incorporated in 10 CSR 25-3.260(1), shall be managed in accordance with 10 CSR 25-11.279 and applicable portions of 10 CSR 25-3.260–10 CSR 25-9.020;

17. The resource recovery of hazardous waste is regulated by 10 CSR 25-9.020. An owner/operator of a facility that uses, reuses, or recycles hazardous waste shall be certified under 10 CSR 25-9 or permitted under 10 CSR 25-7, unless otherwise excluded. Therefore, the parenthetic text in 40 CFR 261.6(c)(1) is not incorporated in this rule; and

18. In accordance with **section** 260.432.5(2), **RSMo,** used cathode ray tubes (CRTs) may not be placed in a sanitary landfill, except as permitted by **section** 260.380.3**, RSMo**.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 5—Rules Applicable to Generators of Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 262, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 49 CFR part 172, October 1, 1999, 40 CFR 302.4 and .5, July 1, 2006, and 40 CFR part 262, July 1, *[2006]* **2010**, except Subpart H, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A generator located in Missouri, except as conditionally exempted in accordance with 10 CSR 25-4.261, shall comply with the requirements of this section in addition to the requirements incorporated in section (1). Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional storage standards which are added to 40 CFR part 262 subpart C are found in subsection (2)(C) of this rule.)

(A) General. The following registration requirements are additional requirements to, or modifications of, the requirements specified in 40 CFR part 262 subpart A:

1. In lieu of 40 CFR 262.12(a) and (c), a generator located in Missouri shall comply with the following requirements:

A. A person generating in one (1) month or accumulating at any one (1) time the quantities of hazardous waste specified in 10 CSR 25-4.261 and a transporter who is required to register as a generator under 10 CSR 25-6.263 shall register and is subject to applicable rules under 10 CSR 25-3.260–10 CSR 25-9.020 and 10 CSR 25-12.010; **and**

[B. A person generating hazardous waste on a "one (1)-time" basis may apply for a temporary registration. A temporary registration shall be valid for one (1) initial thirty (30)-day period with the possibility of an extension of one (1) additional thirty (30)-day period. Should a temporary registration exceed the total sixty (60)-day period outlined here, the department shall consider the registration to be permanent rather than temporary. All reporting requirements and registration fees outlined in this chapter shall apply to temporary registrations; and]

*[C.]***B.** Conditionally exempt generators may choose to register and obtain Environmental Protection Agency (EPA) and Missouri identification numbers, but in doing so will be subject to any initial registration fee and annual renewal fee outlined in this chapter;

2. An owner/operator of a treatment, storage, disposal, or resource recovery facility who ships hazardous waste from the facility shall comply with this rule;

3. The following constitutes the procedure for registering:

A. A person who is required to register shall file a completed registration form furnished by the department. The department shall require an original ink signature on all registration forms before processing. In the event the department develops the ability to accept electronic submission of the registration form, the signature requirement will be consistent with the legally-accepted standards in Missouri for an electronic signature on documents. All generators located in Missouri shall use only the Missouri version of the registration form;

B. A person required to register shall also complete and file an updated generator registration form if the information filed with the department changes;

C. The department may request additional information, including information concerning the nature and hazards associated with a particular waste or any information or reports concerning the quantities and disposition of any hazardous wastes as necessary to authorize storage, treatment, or disposal and to ensure proper hazardous waste management;

D. A person who is required to register, and those conditionally-exempt generators who choose to register, shall pay a one-hundred-dollar ($100) initial or reactivation registration fee at the time their registration form is filed with the department. If a generator site has an inactive registration, and a generator required to register reactivates that registration, the generator shall file a registration form and pay the one-hundred-dollar ($100) registration reactivation fee. The department shall not process any form for an initial registration or reactivation of a registration if the one-hundred-dollar ($100) fee is not included. Generators required to register shall thereafter pay an annual renewal fee of one hundred dollars ($100) in order to maintain their registration in good standing; and

E. Any person who pays the registration fee with what is found to be an insufficient check shall have their registration immediately revoked;

4. The following constitutes the procedure for registration renewal:

A. The calendar year shall constitute the annual registration period;

B. Annual registration renewal billings will be sent by December 1 of each year to all generators holding an active registration;

C. Any generator initially registering between October 1 and December 31 of any given year shall pay the initial registration fee, but shall not pay the annual renewal fee for the calendar year immediately following their initial registration. From that year forward, they shall pay the annual renewal fee;

D. Any generator required to register who fails to pay the annual renewal fee by the due date specified on the billing shall be administratively inactivated and subject to enforcement action for failure to properly maintain their registration;

E. Generators administratively inactivated for failure to pay the renewal fee in a timely manner, who later in the same registration year pay the annual renewal fee, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar ($100) annual renewal fee for each applicable registration year and shall file an updated generator registration form with the department before their registration is reactivated by the department;

F. Generators who request that their registration be made inactive rather than pay the renewal fee, who later in that same renewal year pay the annual renewal fee to reactivate their registration, shall pay the fifteen-percent (15%) late fee required by **section** 260.380.4**,** RSMo**,** in addition to the one-hundred-dollar ($100) annual renewal fee and file an updated generator registration form with the department before their registration is reactivated by the department; and

G. Any person who pays the annual renewal fee with what is found to be an insufficient check shall have their registration immediately revoked; **and**

5. The department may administratively inactivate the registration of generators that fail to pay any applicable hazardous waste fees and taxes in a timely manner after appropriate notice to do so.

*AUTHORITY: sections 260.370 and 260.380, RSMo Supp. [2008] **2010**. This rule was previously filed as 10 CSR 25-5.010. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 6—Rules Applicable to Transporters of Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste. The commission is proposing to amend section (1).

PURPOSE: The commission is updating the date for incorporated-by-reference material.

(1) The regulations set forth in 40 CFR part 263, July 1, *[2006]* **2010**; 49 CFR parts 171–180, November 1, 1990, and December 1, 1997; and 49 CFR parts 40, 383, 387, 390–397, October 1, 1990, and October 1, 1997, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for 49 CFR 390.3(f)(2), which is not incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in

addition to any other modifications set forth in section (2) of this rule except that the modifications do not apply to the 49 CFR parts incorporated in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.385 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 264, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 264, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modification set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. "Owner/operator," as defined in 10 CSR 25-3.260(2)(O)3., shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 264 incorporated in this rule.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal facility shall comply with this section in addition to the regulations of 40 CFR part 264. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 264 subpart E are found in subsection (2)(E) of this rule.)

(A) General. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart A.

1. A treatment permit is not required under this rule for a resource recovery process that has been certified by the department in accordance with 10 CSR 25-9.020. Storage of hazardous waste prior to resource recovery must be in compliance with this rule.

2. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department compliance with the requirements in 10 CSR 25-7.270(2)(A)3.

3. Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)

[4. 40 CFR 264.1(g)(11)(ii) is not incorporated into this rule.]

(P) Health Profiles.

1. An owner/operator shall submit a health profile, as required by section 260.395.7(5), RSMo, with the **initial** application for a hazardous waste treatment or *[operating]* **land** disposal facility. *[(]*A health profile is not necessary for **facilities that must obtain** a *[post-closure]* permit **for only post-closure care and/or corrective action activities**.*[)]* A health profile shall *[include efforts to]* identify any **potential** serious illnesses, the rate of which exceeds the state average for the illnesses, which might be attributable to environmental contamination*[. A serious illness is one which may cause or significantly contribute to an increase in morbidity and mortality or an increase in reversible or irreversible incapacitating effects*

on the health of humans. An owner/operator shall consult the Missouri Department of Health regarding appropriate factors to be included in the profile prior to initiating the health profile.

A. The health profile shall address five (5) main sources of data as listed and shall take into consideration—

(I) The population density around the site, as indicated by the most current census data;

(II) Mortality, as indicated by death certificate information;

(III) Incidence, as indicated by the State Cancer Registry;

(IV) Natality, as indicated by fetal death and birth certificate information; and

(V) Morbidity, as indicated by hospital discharge information.

B. Conditions reflecting routes of exposure shall be included in the report for all hazardous wastes to be treated or disposed of at the facility.

C. The discussion of measurements of health characteristics shall focus on comparisons between state, county and site-specific rates.

D. Site-specific rates shall include a geographic area of an approximate three to five (3—5)-mile radius around the site using zip code boundaries. Geographic areas of larger or smaller size may be used, where approved by the Missouri Department of Health, and shall reflect the risks on a representative population. Only Missouri data is required for any site where the three to five (3—5)-mile radius extends into another state.

(I) For incinerators, special consideration shall be given to wind roses for each season with distinct meteorological conditions. In addition, calculated effluent plume paths, including areas of maximum impact and width and length of plume at ground level, should be presented.

(II) After analysis of the data required in this section, modification of the site-specific geographic area from which disease rates will be computed may be necessary with respect to the previously mentioned three to five (3—5)-mile radius around the site.

E A minimum of five (5) years' data shall be required for a statistical analysis and averaging of rate computations. Qualitative technical difficulties in data resulting in time periods of less than five (5) years shall be fully explained and justified in the text of the report.] **from any hazardous waste treatment or land disposal unit at the hazardous waste facility applying for the permit. The purpose of the information in the health profile is to document the potential for exposure from the applicable hazardous waste treatment or land disposal units and to determine whether additional permit controls are necessary for these units to ensure protection of human health beyond the facility property boundaries. One (1) of the following for each applicable unit or combination of units as approved by the department may constitute a health profile for the purposes of this subsection:**

A. For combustion units—

(I) The evaluation described in 40 CFR 270.10(l)(1) for hazardous waste combustion units;

(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.;

B. For other treatment units—

(I) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(II) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.; and

C. For land disposal units—

(I) The information required by 40 CFR 270.10(j);

(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.

2. This paragraph sets forth requirements which shall be met subsequent to the initial **permit** application **for hazardous waste treatment and/or land disposal activities**.

A. *[A]* **If changes occur after permit issuance that may increase the potential for human exposure to hazardous waste or hazardous constituents from the treatment or land disposal unit, an updated** health profile shall be part of *[each request]* **a facility application** for permit renewal **or permit modifications that include addition or modification of a hazardous waste treatment or land disposal unit**.

B. Appropriate documentation to be submitted as the updated health profile shall include one (1) of the options set out in subparagraphs (2)(P)1.A. through C., or an update of a previous submittal under those requirements.

*[B.]***3.** Additional epidemiological investigations **by the Missouri Department of Health and Senior Services** may be required *[when the rate of any illness in the area described in subparagraph (2)(P)1.D. of this rule exceeds the state average for that illness]* **if the information provided pursuant to subparagraph (2)(P)2.B. indicates the presence of potentially acceptable human health risks**.

4. A Health Evaluation by the Missouri Department of Health and Senior Services will assess the potential for exposure and adverse health effects to the public from materials released by the applicable hazardous waste units. If the owner or operator chooses to request a Health Evaluation by the Missouri Department of Health and Senior Services to meet the requirements of this subsection, the request shall be submitted with the initial application; however, permit shall not be issued until the evaluation is final.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so

prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 265, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 265, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 265 incorporated in this rule. In the case of contradictory or conflicting requirements in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional requirements to be added to 40 CFR part 265 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 265 subpart A, the following regulations also apply:

1. This rule does not apply to an owner/operator of an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste generated on-site or generated by its operator or only one (1) operator if the unit meets the standards set forth in 10 CSR 25-7.270(2)(A)3.;

2. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with 10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes. (Note: Underground injection wells are prohibited in Missouri by section 577.155, RSMo.);

3. State interim status is authorization to operate a hazardous waste treatment, storage**,** or disposal facility pursuant to section 260.395.15, RSMo, 10 CSR 25-7.265**,** and 10 CSR 25-7.270 until the final administrative disposition of the permit application is made or until interim status is terminated pursuant to 10 CSR 25-7.270. The owner/operator of a facility or unit operating under state interim status shall comply with the requirements of this rule and 10 CSR 25-7.270. In addition to providing notification to the Environmental Protection Agency (EPA), the owner/operator is required to provide state notification in accordance with 10 CSR 25-7.270; **and**

4. Hazardous waste which must be managed in a permitted unit (e.g., waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held in areas for handling during the time period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow the necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)*[; and]***.**

[5. 40 CFR 265.1(c)(14)(ii) is not incorporated into this rule.]

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 266, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 266, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons subject to the regulations in 40 CFR part 266 shall comply with the requirements, changes, additions, or deletions noted in this section in addition to 40 CFR part 266 incorporated in this rule. (Comment: This section has been organized so that all Missouri additions or changes to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to the management requirements for hazardous waste fuels, 40 CFR part 266 subpart D, are found in subsection (2)(D) of this rule.)

(H) Hazardous Waste Burned in Boilers and Industrial Furnaces. Additions, modifications**,** and deletions to 40 CFR part 266 subpart H "Hazardous Waste Burned in Boilers and Industrial Furnaces" are as follows:

1. 40 CFR 266.100*[(b)]***(c)**(1) is not incorporated by reference in this rule;

2. Add the following provision to 40 CFR 266.100*[(c)]***(d)** incorporated in this rule: "The owner/operator of facilities that process hazardous waste solely for metal recovery in accordance with 40 CFR 266.100*[(c)]***(d)** shall be certified for resource recovery pursuant to 10 CSR 25-9.020";

3. In 40 CFR 266.101(c)(2) incorporated in this rule, *[delete "(c)(1) of" and in its place insert "(c)(1) and (d)(1) of"]* **replace "paragraph (c)(1)" with "paragraphs (c)(1) and (d)(1)"**; and

4. 40 CFR 266.101 is amended by adding a new subsection (d) to 266.101 incorporated in this rule as follows: (d)(1) Treatment facilities. Owners/operators of permitted facilities that thermally, chemically, physically (that is, shredding, grinding, etc.)**,** or biologically treat hazardous waste prior to burning must comply with 10 CSR 25-7.264(2)(X), and owners/operator**s** of interim status facilities that thermally, chemically, physically (that is, shredding, grinding, etc.)**,** or biologically treat hazardous waste prior to burning shall comply with 10 CSR 25-7.265(2)(P) and (Q). Owners/operators of permitted facilities which blend hazardous waste in tanks or containers prior to burning must comply with 10 CSR 25-7.264(2)(J)*[7.]***6.**, and owners/operators of interim status facilities that blend hazardous waste in tanks or containers prior to burning shall comply with 10 CSR 25-7.265(2)(J).

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.268 Land Disposal Restrictions. The commission is proposing to amend sections (1) and (2).

PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 268, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the* ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 268, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons who generate or transport hazardous waste and owners/operators of hazardous waste treatment, storage, and disposal facilities shall comply with this section in addition to the regulations in 40 CFR part 268. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 268 subpart A are found in subsection (2)(A) of this rule.)

(A) General. This subsection sets forth modifications to 40 CFR part 268 subpart A incorporated by reference in section (1) of this rule.

1. *[40 CFR 268.1(f)(2) is not incorporated into this rule.]* ***(Reserved)***

2. The state cannot be delegated the authority from the United States Environmental Protection Agency (EPA) to approve extensions to effective dates of any applicable restrictions, as provided in 40 CFR 268.5 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.5 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.5 of the federal hazardous waste management regulations.

3. The state cannot be delegated the authority from the EPA to approve exemptions from prohibitions for the disposal of a restricted hazardous waste in a particular unit(s) based upon a petition demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit(s) for as long as the wastes remain hazardous as provided in 40 CFR 268.6 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.6 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.6 of the federal hazardous waste management regulations.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010*** *and sections 260.390, 260.395, and 260.400, RSMo 2000. Original rule filed Feb. 16, 1990, effective Dec. 31, 1990. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program. The commission is proposing to amend sections (1) and (2).

PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 270, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference*

these changes. The amendment will update the state regulations to be consistent with the most recent edition of the ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 270, July 1, *[2006]* **2010**, except for the changes made at 70 FR 53453 September 8, 2005, **and 73 FR 64667 to 73 FR 64788, October 30, 2008,** as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this rule along with 40 CFR part 270, incorporated in this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 270 subpart A are found in subsection (2)(A) of this rule.)

(A) General Information. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart A.

1. When a facility is owned by one (1) person but is operated by another person, both the owner and operator shall sign the permit application, and the permit shall be issued to both.

2. The owner/operator of a new hazardous waste management facility shall contact the department and obtain a*[n]* United States Environmental Protection Agency (EPA) identification number before commencing treatment, storage**,** or disposal of hazardous waste.

3. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department the following:

A. There is sufficient evidence that the unit is not leaking;

B. The unit is structurally sound and there is no evidence that the unit will fail or collapse;

C. There are no incompatible wastes being placed in the unit;

D. The owner/operator has been and is in compliance with all present and prior permits and authorizations issued to the owner/operator; and

E. There is no evidence of any past releases from the unit.

4. In addition to the requirements in 40 CFR 270.1(b) incorporated in this rule, the owner/operator shall provide state notification to the department within sixty (60) days after the effective date of a state rule that first requires him/her to comply with 10 CSR 25 where that notification is required.

5. *[40 CFR 270.1(c)(2)(viii)(B) is not incorporated into this rule.]* ***(Reserved)***

6. In 40 CFR 270.2, substitute "Facility mailing list means the mailing list required of the permittee or applicant in accordance with 10 CSR 25-7.270(2)(B)10." for the definition of "Facility mailing list" given in the incorporated regulation.

7. In 40 CFR 270.3 "Considerations Under Federal Law," do not substitute any comparable Missouri statute or administrative rule for the federal acts and regulations. This does not relieve the owner/operator of his/her responsibility to comply with any applicable and comparable state law or rule in addition to complying with the federal acts and regulations.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010*** *and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 8—Public Participation and General Procedural Requirements

PROPOSED AMENDMENT

10 CSR 25-8.124 Procedures for Decision Making. The commission is proposing to amend the purpose statement and sections (1)–(5) of this rule.

PURPOSE: 10 CSR 25-8.124 is the state equivalent of the federal requirements for public participation found in 40 CFR part 124. In order to be equivalent with the federal regulations, the commission is proposing various changes to the state requirements that were determined by the United States Environmental Protection Agency to require modification in order to be considered equivalent. Additionally, the amendment is intended to ensure that the rule accurately reflects the current public participation process for permit applications, issuance, modification, and denial.

PURPOSE: This rule reflects the requirements of the federal regulations in 40 CFR part 124 [as amended by changes published in the Federal Register on December 11, 1995 (60 FR 63417)] ***July 1, 2010****, with modifications and additional requirements established by the* ***Revised Statutes of Missouri****. This rule establishes the requirements for public notice and public participation in the issuance,* ***denial,*** *modification****,*** *and revocation of hazardous waste management facility permits, [and resource recovery facility*

certifications, and the issuance and revocation of transporter licenses. This rule also specifies procedures for public participation in] appeal hearings, variance petitions, and closure ***and post-closure*** *activities.* ***This rule also specifies procedures for the issuance, modification, and revocation of resource recovery facility certifications and the issuance and revocation of transporter licenses.***

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule**, in addition to any other modifications established in paragraph (1)(A)(2). of this rule**. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40 CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements *[which]* **that** correspond to those requirements in 40 CFR **part** 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 **or department-initiated** modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. **This subsection also contains procedures for the denial of a permit, either in its entirety or as to the active life of a hazardous waste management facility or unit, under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270.** Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 **permit** modifications, as defined in 40 CFR *[270.41 or 40 CFR 270.43]* **270.42** as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2 *[and 271.2]*, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule:

[A. "Application" means the Environmental Protection Agency (EPA) standard national forms and the Missouri Hazardous Waste Management Facility Application Form for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14 through 270.29, as incorporated into 10 CSR 25-7.270;]

*[B.]***A.** "Draft permit" means a document prepared under paragraph (1)(A)6. of this rule indicating the department's tentative decision to issue, **deny,** modify *[in whole or]* in part **or in total, revoke**, or reissue a "permit." **A notice of intent to revoke, as discussed in subparagraph (1)(A)5.D. of this rule, and a notice of intent to deny, as discussed in subparagraph (1)(A)6.B. of this rule, are types of draft permits.** A denial of a request for modification, total modification**,** or revocation **of a permit**, as discussed in **sub**paragraph (1)(A)5.**B.** of this rule, is not a **type of** "draft permit" *[and is not appealable to the commission]*;

*[C.]***B.** "Formal hearing" means any contested case held under section 260.400, RSMo;

C. "Permit application" means the U.S. Environmental Protection Agency standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by the U.S. Environmental Protection Agency for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14–270.29, as incorporated into 10 CSR 25-7.270;

D. "Public hearing" means any hearing on a *[preliminary]* **tentative** decision at which any member of the public is invited to give oral or written comments;

E. "Revocation" means the termination of a permit;

F. "Schedule of compliance" means a schedule of remedial measures in a *[final]* permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. "Total modification" means the revocation and reissuance of a permit;

H. "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. "Variance" means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department *[an]* **a permit** application for each permit required under 40 CFR 270.1, as incorporated in 10 CSR 25-7.270. **Permit** *[A]***a**pplications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the **permit** application requirements for that permit**, as provided under 40 CFR 270.10 and 270.13, as incorporated in 10 CSR 25-7.270.** Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every **permit** application *[for a permit]*. **Each permit application submitted by a new facility should be reviewed for completeness by the department within thirty (30) days of its receipt.** Each **permit** application *[for a permit]* submitted **by an existing facility** should be reviewed for completeness by the department within *[forty-five (45)]* **sixty (60)** days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the **permit** application is complete. If the **permit** application is incomplete, the department will list the information necessary to make the **permit** application complete. When the **permit** application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the **permit** application is complete upon receiving the required information. After the **permit** application is complete*[d]*, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render *[an]* **a permit** application incomplete.

C. If an applicant fails or refuses to correct deficiencies in the **permit** application, the permit may be denied*[,]* and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of *[an]* **a permit** application is the date the department notifies the applicant that the **permit** application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each **permit** application the department will, no later than the effective date of the **permit** application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to*[:]*—

(I) Prepare a draft permit;

(II) Give public notice;

(III) Complete the public comment period, including any public hearing; and

(IV) Issue a final permit **decision**.

F. If the department decides that a site visit is necessary for any reason in conjunction with the processing of a permit application, the department will notify the applicant and a date will be scheduled.

G. Whenever a facility or activity requires more than one (1) type of environmental permit from the state, the applicant may request, or the department may offer, a unified permitting

schedule that covers the timing and order to obtain such permits, as provided in section 640.017, RSMo, and 10 CSR 1-3.010.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the **permit** modification **and to the permittee**. Denial of a request for *[revocation,]* modification**,** *[or total modification]* **in part or in total, or revocation of a permit is not subject to public notice, comment, or hearing, and** is not appealable *[to the commission]* **under section (2) of this rule**.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit *[in total or]* in part **or in total**, a draft permit **incorporating the proposed changes** will be prepared according to paragraph (1)(A)6. of this rule *[incorporating the proposed changes]*. The department may request additional information and, in the case of a **partial** permit modification, may require the submission of an updated **permit** application. In the case of a total **permit** modification, the department will require the submission of a new **permit** application.

(II) *[In a permit modification]* **When a permit is partially modified** under this paragraph, only *[those]* **the** conditions *[to be]* **being** modified shall be reopened *[when a draft permit is prepared]*. All other *[aspects]* **conditions** of the *[existing]* **original** permit shall remain in effect for the duration of the *[unmodified]* **original** permit. When a permit is totally modified under this *[section]* **paragraph**, the entire permit is reopened just as if the permit had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the *[existing]* **original** permit until a new, final permit is *[re]*issued.

(III) "Class 1 and **class** 2 **permit** modifications" as defined in 40 CFR 270.42*[(a) and (b)]*, as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this *[section]* **paragraph**.

D. If the department tentatively decides to revoke a permit, the department will issue a notice **of intent to revoke. A notice of intent to revoke is a type of draft permit** and follows the *[requirements of paragraph (1)(A)15. of this rule.]* **same procedures as any draft permit decision prepared under paragraph (1)(A)6. of this rule.**

6. Draft permits.

A. Once the technical review of *[an]* **a permit** application is complete*[d]*, the department shall tentatively decide whether to prepare a draft permit, or *[to]* deny the **permit** application.

B. If the department decides to deny the permit application, a notice of *[denial]* **intent to deny** shall be issued. A notice of *[denial]* **intent to deny is a type of draft permit and follows** *[is subject to]* the same procedures as any *[final]* **draft** permit decision prepared under *[paragraph(1)(A)15. of this rule]* **this paragraph**. **If the department's final decision under paragraph (1)(A)15. of this rule is that the decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and prepare a draft permit under this paragraph.**

C. If the department **tentatively** decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, *[and]* **publicly noticed per paragraph (1)(A)10. of this rule,** and made available for public comment per paragraph *[(1)(A)10.]* **(1)(A)11.** of this rule**. The department will give notice of opportunity for a public hearing per paragraph (1)(A)12. of this rule**, issue a final decision per paragraph (1)(A)15. of this rule**,** and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under *[section 260.395.11, and Chapter 536, RSMo and]* section (2) of this rule.

E. Prior to making the draft permit available for public comment, the department shall deliver the draft permit to the applicant for review, as provided in section 640.016.2, RSMo. The applicant shall have ten (10) days to review the draft permit for nonsubstantive drafting errors. The department shall make the applicant's changes to the draft permit within ten (10) days of receiving the applicant's review and then submit the draft permit for public comment. The applicant may waive the opportunity to review the draft permit prior to public notice.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological**,** and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the **public** comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

(V) Name and telephone number of a *[person to contact]* **department contact** for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that *[a draft permit has been prepared.]* **the following actions have occurred:**

(a) A notice of intent to deny a permit application has been prepared under subparagraph (1)(A)6.B. of this rule;

(b) A draft permit has been prepared under subparagraph (1)(A)6.C. of this rule;

(c) A hearing has been scheduled under paragraph (1)(A)12. of this rule;

(d) An appeal hearing has been scheduled under section (2) of this rule; or

(e) A notice of intent to revoke a permit has been prepared under subparagraph (1)(A)5.D. of this rule.

(II) No public notice is required when a request for permit modification, **in part or in** total *[modification]*, or revocation is denied. *[Written notice of that denial]* **A brief written response**

giving a reason for the decision will be *[given]* **sent** to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit **(including a notice of intent to deny a permit application and a notice of intent to revoke a permit)** required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing. **Public notice of the hearing may be given at the same time as the public notice of the draft permit, and the two (2) notices may be combined.**

C. Methods. Public notice of *[a draft permit or intent to deny]* **activities** described in *[subparagraph]* **part** (1)(A)10.A.**(I)** of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons **(any person otherwise entitled to receive notice under this part may waive their rights to receive notice for any permit)**:

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, **and** state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by*[:]***—**

I. Including those who request *[in writing]* to be on the list;

II. Soliciting persons for "area lists" from participants in past permit proceedings in that area; *[and]*

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The *[department]* **facility** may *[delete]* **remove** from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the **current or proposed** facility**, in accordance with section 260.395.8, RSMo**;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the **current or** proposed facility**, in accordance with section 260.395.8, RSMo**;

(d) A copy of the notice shall also be sent to *[any unit of local government]* **the highest elected official of the county and the highest elected official of the city, town, or village** having jurisdiction over the area where the facility is **currently or** proposed **to be located, in accordance with section 260.395.8, RSMo, and each state agency having any authority under state law with respect to the construction or operation of such facility**;

(e) The department will mail a copy of the legal notice, fact sheet**,** and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule; **and**

(f) A copy of the notice shall also be sent to any other department program or federal agency which the department knows has issued or is required to issue a Resource Conservation and Recovery Act (RCRA), Hazardous and Solid Waste Amendments (HSWA), Underground Injection Control (UIC), Prevention of Significant Deterioration (PSD), (or other permit issued under the Clean Air Act), National Pollutant Discharge Elimination System (NPDES), 404, or sludge management permit for the same facility or activity (including the U.S. Environmental Protection Agency);

(II) Other publication.

(a) *[Publication of]* **Publish** a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any **draft permit that includes** active land disposal *[facility permit]* **of hazardous waste**, **issue** a news release to the media serving the area where the facility is **currently or proposed to be** located**, in accordance with section 260.395.8, RSMo**; and

(III) Any other method reasonably calculated to give actual notice of the *[action in question]* **activity** to the persons potentially affected by it, including *[press]* **news** releases or any other forum or medium to elicit public participation.

D. Contents. All *[public]* notices issued under this *[sub]*paragraph shall contain the following minimum information:

(I) Name and address of the department;

(II) Name and address of the permittee or *[permit]* applicant and, if different, of the facility or activity regulated by the permit;

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address**,** and telephone number of *[an agency]* **a department** contact person *[for further]* **from whom interested persons may obtain additional** information*[, which may include copies of the draft permit, fact sheet, and the application]*;

(V) A brief description of the comment procedures, the **date,** time**,** and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled), and any other procedures by which the public may participate in the final permit decision; *[and]*

(VI) Any additional information considered necessary or proper by the department*[.]***;**

(VII) The location where the information listed in subpart (1)(A)10.C.(I)(e) of this rule was placed for public review; and

(VIII) In addition to the information listed above, the public notice of a public hearing under paragraph (1)(A)12. of this rule shall contain the following information:

(a) Reference to the date of previous public notices relating to the draft permit;

(b) Date, time, and place of the hearing; and

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

E. In addition to the notice described in subparagraph (1)(A)10.D. of this rule, the department shall mail a copy of the permit application (if any), draft permit, and fact sheet to all persons identified in subparts (1)(A)10.C.(I)(a), (b), and (f) of this rule.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised in the hearing. All **written** comments **and oral comments given at the public hearing, if one is held,** shall be considered by the department in making the final **permit** decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. **In accordance with section 260.395.8, RSMo,** *[T]***t**he department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice*[. Whenever the department issues, reviews every five (5) years or renews an active hazardous waste land disposal*

facility permit, it shall hold a public hearing.] **under part (1)(A)10.B.(I) of this rule. For any permit that includes active land disposal of hazardous waste, the department shall hold a public hearing after public notice, as required in paragraph (1)(A)10. of this rule, before issuing, modifying in total, or renewing the permit; and before any Class 3 or department-initiated permit modification related to the hazardous waste land disposal unit(s), including those necessary due to the department's five (5)-year review.**

B. The department may hold a public hearing **at its own discretion** whenever there is significant public interest in a draft permit*[(s),]* **or** when*[ever]* one **(1)** or more issues involved in the permit decision *[could be clarified or at its discretion]* **requires clarification**.

C. Whenever possible, the department will schedule a **public** hearing under this *[section]* **paragraph** at a location convenient to the nearest population center to the **current or** proposed facility.

D. Public notice of the **public** hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit **written** comments or data concerning the draft permit. The department will accept oral comments during the **public** hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph (1)(A)10. of this rule will automatically be extended to the close of any public hearing if the **public** hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the **public** hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including **the** applicant*[s]*, who believe**s** any condition of a draft permit is inappropriate*[,]* **or that the department's tentative decision to deny a permit application, prepare a draft permit, or revoke a permit is inappropriate,** shall raise all ascertainable issues and submit all *[available]* **relevant** arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless *[they consist of]* **the supporting materials are** state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. *[Commenters shall make supporting materials available to the department upon the department's request.]*

14. *Reserved*.

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, **Class 3 or department-initiated** modification, total modification, or revocation of a permit. After the close of the public comment period *[described in]* **under** paragraph (1)(A)10. of this rule *[on a draft permit]*, the department will issue a final permit decision **(or a decision to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270)**. The department will notify the applicant and each person who *[has]* submitted written comments**, gave oral comments at the public hearing,** or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a **final permit** decision **under section (2) of this rule**. *[For active land disposal facility permits, t]***T**he department *[also]* will **also** send a news release announcing the final **permit** decision to the *[news]* media serving the area where the facility is **currently or proposed to be** located**, in accordance with section 260.395.8, RSMo**.

B. *[A final permit revocation decision will become effective thirty (30) days after the decision.]* A final permit issuance**,** *[or]* denial**, or modification decision (or a decision to deny a permit either in its entirety or as to the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270)** will become effective on the date the decision is signed by the department. **A final permit revocation decision will become effective thirty (30) days after the department signs the decision, unless no comments requested a change in the draft permit revocation decision, in which case the final permit revocation decision will become effective on the date the decision is signed by the department.**

16. *Reserved*.

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall*[:]***—**

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period*[, or during any]* **and public** hearing**, if one was held**.

B. The response to comments will be **made** available to the public.

18. *Reserved*.

19. *Reserved*.

20. *[Reserved.]* **Computation of time.**

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to end before the occurrence of an act or event shall end on the last working day before the act or event.

C. If the last day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a specific time period after he or she receives notice by mail, three (3) days shall be added to the time period to allow for mail delivery.

(B) This subsection sets forth requirements *[which]* **that** correspond to the requirements in 40 CFR part 124 subpart B.

1. Applicable permit procedures.

A. The requirements of this *[subsection]* **paragraph** shall apply to all new *[part B]* **permit** applications*[. The requirements of this section shall also apply to part B]* **and permit** applications for renewal of permits where a significant change in facility operations is proposed. For purposes of this *[section]* **paragraph**, a "significant change" is any change that would qualify as a class *[III]***3** permit modification under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270. The requirements of this *[section]* **paragraph** do not apply to **class 1 or class 2** permit modifications *[under]***, as defined in** 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or *[to]* **permit** applications *[that are]* submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. **At least ninety (90) days** *[P]***p**rior to *[submission of an]* **submitting a permit** application*[, proposed]* **for a** disposal *[facilities]* **facility, the applicant** shall submit **to the department** a letter of intent **to construct, substantially alter, or operate a hazardous waste disposal facility,** in accordance with section 260.395**.7**, RSMo. *[When a letter of intent submitted under section 260.395, RSMo is received, t]***T**he department will publish the letter within ten (10) days of receipt. *[In accordance with section 260.395, RSMo, t]***T**he letter will be published as specified in section 493.050, RSMo. The letter will be published once a week for four (4) **consecutive** weeks in a newspaper of general circulation serving the county in which the facility is **currently or** proposed to be located.

C. Prior to *[the submission of]* **submitting** a *[part B]* permit application for a facility, the applicant shall hold at least one (1) **public** meeting *[with the public in order]* to solicit questions from

the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide an opportunity for attendees to voluntarily provide their names and addresses.

D. The applicant shall submit a summary of the meeting, *[along with]* the list of attendees and their addresses developed under subparagraph (1)(B)1.C. of this rule, and copies of any written comments or materials submitted at the meeting*[,]* to the *[permitting agency]* **department** as a part of the *[part B]* **permit** application, in accordance with 40 CFR 270.14(b), as incorporated in 10 CSR 25-7.270.

E. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department *[upon request]* **as part of the permit application**, documentation of the notice.

(I) The applicant shall provide public notice in all of the following forms:

(a) A newspaper advertisement. The applicant shall publish a notice*[, fulfilling the requirements in part (1)(B)1.E.(II) of this rule,]* **as a display advertisement** in a newspaper of general circulation *[in]* **serving** the county or equivalent jurisdiction *[in the proposed location of the facility]* **where the current or proposed facility is located**. In addition, the applicant shall publish the notice in newspapers of general circulation *[in]* **serving** adjacent counties or equivalent jurisdictions*[. The notice shall be published as a display advertisement]*;

(b) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility*[, fulfilling the requirements in part (1)(B)1.E.(II)]*. If the applicant places the sign on the facility property, *[then]* the sign shall be large enough to be read*[able]* from the nearest point where the public would pass by the site;

(c) A broadcast media announcement. The applicant shall broadcast *[one (1) notice, fulfilling the requirements in part (1)(B)1.E.(II) of this rule,]* **a notice as a paid advertisement** at least once on at least one (1) local radio station or television station. The applicant may employ another medium with the prior written approval of the department; and

(d) *[A notice to the permitting agency.]* **In addition to the department,** *[T]***t**he applicant shall send a copy of the newspaper *[notice to the permitting agency and]* **advertisement** to the units of **state and** local government described in subpart (1)(A)10.C.(I)(d) of this rule.

(II) *[The]* **All** notices required under *[part (1)(B)1.E.(I) of this rule]* **this subparagraph** shall include:

(a) The date, time, and location of the meeting;

(b) A brief description of the purpose of the meeting;

(c) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the **current or proposed** facility location;

(d) A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

(e) The name, address, and telephone number of a contact person for the applicant.

2. Public notice requirements at the **permit** application stage.

A. Applicability. The requirements of this *[section]* **paragraph** shall apply to all *[part B]* **new permit** applications *[seeking initial permits]* for hazardous waste management units*[. The requirements of this section shall also apply to part B]* **and permit** applications *[seeking]* **for** renewal of permits for such units under 40 CFR 270.51, as incorporated in 10 CSR 25-7.270. The requirements of this *[section]* **paragraph** do not apply to permit modifications *[under]***, as defined in** 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Notification at **permit** application submittal.

(I) The department shall provide public notice as set forth in subpart (1)(A)10.C.(I)(c) of this rule, and notice to the appropriate units of **state and** local government as set forth in subpart (1)(A)10.C.(I)*[(b)]***(d)** of this rule, that a complete *[part B]* permit application has been submitted to the *[agency]* **department** and is available for review.

(II) The notice will be published within a reasonable period of time after the *[application is received by the]* department **determines that the permit application is complete**. The notice must include:

(a) The name and telephone number of the applicant's contact person;

(b) The name and telephone number of *[the permitting agency's office,]* **the department contact person** and a mailing address to which information and inquiries may be directed throughout the *[permit review]* **permitting** process;

(c) An address to which people can write in order to be put on the facility mailing list;

(d) A location where copies of the permit application and any supporting documents can be viewed and copied;

(e) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the **current or proposed** facility location on the front page of the notice; and

(f) The date that the **permit** application was submitted.

C. Concurrent with the notice required under subparagraph (1)(B)2.B. of this rule, the department will place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the *[permitting agency's]* **department's** office **as identified in the notice**.

3. Information repository.

A. Applicability. The requirements of this *[section]* **paragraph** apply to all applicants seeking hazardous waste management **facility** permits.

B. The department *[may]* **shall** assess the need, on a case-by-case basis, for a*[n]* **local** information repository. When assessing the need for a*[n]* **local** information repository, the department will consider a variety of factors, including*[:]* the level of public interest*[;]***,** the type of facility*[;]***,** and the presence of an existing repository. If the department determines, at any time after submittal of a permit application, that there is a need for a **local** repository, then the department will notify the facility that it must establish and maintain *[an]* **a local** information repository.

C. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department will have the discretion to limit the contents of the repository.

D. The information repository shall be located and maintained at a *[site]* **location** chosen by the facility. If the department finds the *[site]* **location** unsuitable for the purposes and persons for which it was established**,** due to problems with the location, hours of availability, access, or other relevant considerations, the department will specify a more appropriate *[site]* **location**.

E. The department will specify requirements **the applicant must meet** for informing the public about the **local** information repository. At a minimum, the department will require the *[facility]* **applicant** to provide a written notice about the information repository to all individuals on the facility mailing list.

F. The *[facility owner/operator]* **applicant** shall be responsible for maintaining and updating the repository with appropriate information throughout the time period specified by the department. The department may close the repository *[in]* **at** its discretion, based on the factors in subparagraph (1)(B)3.B. of this rule.

(2) Appeal of Final Decision.

(A) **For purposes of this section, a final permit decision means**

the issuance, denial, partial or total modification, or revocation of a permit. The requirements of this section apply to *[permit appeals, permit denials, permit revocations or total modifications,]* **final permit decisions,** closure plan approvals, *[and]* post-closure plan approvals**, and any condition of a final permit decision or approval**.

(B) The applicant or any aggrieved person may appeal to *[the commission a final permit decision, a closure plan approval, a post-closure plan approval or any condition of a final permit, closure plan approval or post-closure plan approval by filing a notice of appeal with the commission within thirty (30) days of the decision.]* **have the matter heard by the Administrative Hearing Commission. To initiate the appeal, the aggrieved party must follow the procedure established in 10 CSR 25-2.020 and sections 260.395.11 and 621.250, RSMo. Written petitions must be filed within thirty (30) days after the date the final permit decision or approval was mailed or the date it was delivered, whichever was earlier. If the written petition is sent by registered or certified mail, the petition will be deemed filed on the date it was mailed. If the written petition is sent by any other method, the petition will be deemed filed on the date it is received by the Administrative Hearing Commission.** The *[notice of appeal]* **written petition** shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit **decision** or approval to the applicant's or aggrieved person's satisfaction. Issues included in the *[notice of appeal]* **written petition** outside those raised during the public comment period shall not be considered; however, the **Administrative Hearing** *[c]***C**ommission may consider an appeal of a condition in the final permit **decision or approval** that was not part of the draft permit **or proposal** and therefore could not have been commented *[upon previously]* **on during the public comment period**.

(D) Any party described in subsection (2)(G) of this rule may petition the **Administrative Hearing** *[c]***C**ommission for an interlocutory order staying the effectiveness of a final permit **decision**, a closure plan approval, a post-closure plan approval**,** or any condition of a final permit **decision** or approval which is subject to an appeal, until the **Missouri Hazardous Waste Management** *[c]***C**ommission enters its final order upon the appeal. *[The applicant may a]***A**t any time during the proceeding**, the applicant may** apply to the **Administrative Hearing** *[c]***C**ommission for relief from a stay order previously issued.

1. In determining whether to grant a stay or relief from a stay, the **Administrative Hearing** *[c]***C**ommission will consider the likelihood that the petition will eventually succeed on the merits, the potential for harm to the applicant, business, industry, public health**,** or the environment if the requested stay or relief is or is not granted**,** and the potential magnitude of the harm.

2. Any decision concerning a petition for a stay or relief from a stay shall not be considered a contested case or a final order and shall be made by a majority of the sitting quorum of the **Administrative Hearing** *[c]***C**ommission.

3. The stay of any **final** permit **decision** pending appeal to the **Administrative Hearing** *[c]***C**ommission shall have the effect of continuing the effect and enforceability of any existing permit until the **Missouri Hazardous Waste Management** *[c]***C**ommission issues a final order upon the appeal, unless the stay is lifted sooner by the **Administrative Hearing** *[c]***C**ommission. **During the appeal proceeding,** *[T]***t**he stay of any condition of a **final** permit **decision** pending appeal *[to the commission]* shall not relieve the applicant of complying *[during the appeal proceeding]* with all conditions of the **final** permit **decision** not stayed.

4. No petition for a stay order or relief from a stay order shall be presented to the **Administrative Hearing** *[c]***C**ommission on less than ten (10) days' notice to all other parties to the proceeding.

(E) A timely **written petition of** appeal stays the effectiveness of a **final** permit revocation **decision**. If a timely *[notice]* **written petition** of appeal is not filed, the **final permit** revocation becomes *[final]* **effective** thirty (30) days after the *[revocation decision was made by the]* department **signs the decision**.

(F) Public notice of **the** appeal*[s]* **hearing**, including the time**, date,** and place of the appeal hearing, shall be given in accordance with part (1)(A)10.C.(II) of this rule. **The department will mail a copy of the notice to all persons identified in subparts (1)(A)10.C.(I)(a) and (c) of this rule. After the Hazardous Waste Management Commission issues a final appeal decision, the department will notify the participants in the appeal hearing and each person who requested notice of the final appeal decision. The department will also send a news release announcing the final appeal decision to the media serving the area where the facility is currently or proposed to be located.**

(G) The participants in an appeal hearing shall be*[:]*—

1. The department;

2. The applicant;

3. Any aggrieved person filing a timely *[notice]* **written petition** of appeal; and

4. Any person who files a timely application for intervention and is granted leave to intervene of right or permissive intervention. Any person desiring to intervene in an appeal shall file with the *[staff director of the]* **Administrative Hearing** *[c]***C**ommission, an application to intervene according to the procedures of Rule 52.12, Supreme Court Rules of Civil Procedure.

A. The application to intervene shall state the interests of the *[applicant and]* **intervener,** the grounds upon which intervention is sought**,** and *[also shall contain]* a statement of the position which the *[applicant]* **intervener** desires to take in the proceeding. The *[applicant]* **intervener** shall serve a copy of the application to intervene on each of the parties to the proceeding as determined under part (1)(A)10.C.(II) of this rule.

B. The **Administrative Hearing** *[c]***C**ommission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The **Administrative Hearing** *[c]***C**ommission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(H) A tape recording or written transcript of the appeal hearing shall be made available to the public.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the *[license]* **application** conforms to the requirements of sections 260.385 and 260.395, RSMo**,** and 10 CSR 25-6*[, and serve on the applicant its decision issuing,]***. The department will notify the applicant of its decision to issue,** with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo**,** have been paid.

2. The procedure for appealing a license **issuance**, *[a]* denial *[of a license]***,** or any condition of a license shall be the same as the procedure for **appealing a final** permit *[appeals]* **decision** under section (2) of this rule.

(B) Revocation of a Transporter License.

1. Transporter licenses may be revoked for the reasons specified in sections 260.379.2, 260.395.3, 260.410.3**,** and 260.410.4, RSMo, or for failure to comply with sections 260.395.1(2) and 260.395.1(3), RSMo.

2. The department may initiate proceedings to revoke a transporter license. If the department proposes to revoke a transporter license, it will send **a notice of intent to revoke** by certified mail to the licensee *[a notice of intent to revoke which will specify]***, specifying** the provisions of sections 260.350-260.434, RSMo, *[the provisions of]* 10 CSR 25-6, the conditions of the license or the provisions of an order issued to the licensee *[which]* **that** the

licensee has violated, *[or]* the manner in which the licensee misrepresented or failed to fully disclose relevant facts, or the manner in which the activities of the licensee endanger human health or the environment*[,]* or are creating a public nuisance.

3. The procedure for appealing a license revocation shall be the same as the procedure for **appealing a** permit revocation under section (2) of this rule. A timely **written petition for** appeal stays the effectiveness of a license revocation. If a timely **written petition for** *[notice of]* appeal is not filed, the revocation shall become *[final]* **effective** thirty (30) days after the **department signs the** revocation decision *[was made by the department]*.

(4) Resource Recovery Facility Certifications.

(A) Issuance of Resource Recovery Facility Certifications. Upon receipt of a complete application for resource recovery facility certification, the department will determine whether the application conforms to the requirements of section 260.395.13, RSMo**,** and 10 CSR 25-9.020*[, and will serve on the applicant its decision issuing]***. The department will notify the applicant of its decision to issue**, with or without conditions, or deny*[ing]* the certification. If the certification is denied, the department will specify the reasons for the denial. The procedure for appealing a certification **issuance**, denial *[of a certification]***,** or any condition of a certification will be the same as the procedure for *[permit appeals]* **appealing a final permit decision** under section (2) of this rule.

(B) Modification of Resource Recovery **Facility** Certifications.

1. The department may modify a resource **recovery facility** certification under any of the following circumstances:

A. When required to prevent violations of the requirements of section 260.395.14, RSMo**,** or 10 CSR 25-9.020;

B. When relevant facts have been misrepresented or not fully disclosed;

C. When required to protect the health of humans or the environment or to prevent or abate a public nuisance;

D. When the facility proposes changing any waste stream(s) *[accepted]* **managed** by the facility; **or**

E. When the facility proposes changing any processes or equipment utilized **for resource recovery operations** at the facility*[; or]***.**

[F. When the conditions specified in 40 CFR 270.41 and 270.42, as incorporated in 10 CSR 25-7.270, would warrant a permit modification if the activities at the facility were also subject to a permit.]

2. If the department proposes to modify the **resource recovery facility** certification**,** it will send **a notice of intent to modify** by certified mail to the *[owner/operator ()]*certificate holder*[() a notice of intent to modify which will specify]***, specifying** the reasons for the proposed modification and the manner in which the certificate is proposed to be modified.

3. The facility may appeal any **certification** modification**s**, except *[a modification]* **those** requested by the facility *[itself]* **that were approved as proposed without further modification**. The procedure for appealing a **certification** modification shall be the same as the procedure for appeal**ing** *[of a permit condition]* **a final permit decision** under section (2) of this rule.

(C) Revocation of Resource Recovery Facility Certifications.

1. The department may initiate proceedings to revoke *[the certification of]* a resource recovery facility **certification**. If the department **decides to** revoke*[s the certification of]* a resource recovery facility **certification**, it will send **a final revocation** by certified mail to the *[owner/operator of the affected facility ()]*the certificate holder*[() a final revocation which will specify]***, specifying** the provisions of section 260.395.14, RSMo, *[the provisions of]* 10 CSR 25-9.020**,** or *[the provisions of]* an order issued to the *[owner/operator which]* **certificate holder that** have been violated**,** *[or]* the manner in which the *[owner/operator]* **certificate holder** misrepresented or failed to fully disclose relevant facts, or the manner in which the activities at the facility endanger human health or the environment or are creating a public nuisance.

2. Resource recovery facility certifications may be revoked for the reasons specified in paragraph (4)(B)1. of this rule.

3. The procedure for appealing a **certification** revocation shall be the same as the procedure for appeal**ing** *[of]* a permit revocation under section (2) of this rule. A timely **written petition for** appeal stays the effectiveness of a **certification** revocation. If a timely *[notice of]* **written petition for** appeal is not filed, the revocation shall become *[final]* **effective** thirty (30) days after the **department signs the** revocation decision *[was made by the department]*.

(5) Variances.

(A) Applicability. **According to section 260.405.1, RSMo, unless prohibited by any federal hazardous waste management act, the Hazardous Waste Management Commission may grant individual variances from the requirements of sections 260.350 to 260.430, RSMo, whenever it is found, upon presentation of adequate proof, that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people.** The commission will not consider any petition for variance that would permit the occurrence or continuance of a condition *[which]* **that** unreasonably poses a present or potential threat to the health of humans or other living organisms. The department may require any petitioner for a variance to submit mailing lists and mailing labels required to accomplish the public notice requirements of this section.

(B) Evaluation. **Upon receipt of any petition for a variance,** *[T]***t**he department will evaluate *[any petition for a variance]* **the petition** to determine whether the request is substantive or non-substantive based upon the effect of the proposed variance on facility operations, types of waste, type and volume of hazardous waste management units, location of facility, public interest**,** and compliance history. Variances from generator or transporter requirements will be deemed non-substantive provided all conditions of subsection (3)(A) of this rule are met.

(C) Substantive Variance. If a variance petition is deemed substantive, the department will*[:]***—**

1. Upon receipt*[:]***—**

A. Mail a notice to all record owners of **real** property **located** within one (1) mile of the outer boundaries of the *[site]* **facility**, the highest elected official of the county**,** and the highest elected official of the city, town**,** or village **having jurisdiction over the area** where the facility is located; and

B. Issue a news release **to the media** and publish a legal notice in a newspaper of general circulation serving *[that area]* **the area where the facility is located**.

2. Within sixty (60) days of receipt*[:]***—**

A. Prepare a recommendation as to whether the variance should be granted, granted with conditions, or denied;

B. Submit the recommendation to the **Missouri Hazardous Waste Management** *[c]***C**ommission;

C. Notify the petitioner of the recommendation;

D. Publish a legal notice regarding the recommendation in a newspaper of general circulation serving *[that area]* **the area where the facility is located**; **and**

E. Mail a notice regarding the recommendation to all record owners of *[adjoining]* **real** property **adjacent to the facility**, the highest elected official of the county**,** and the highest elected official of the city, town**,** or village **having jurisdiction over the area** where the facility is located; and

3. Request a formal hearing before the **Missouri Hazardous Waste Management** *[c]***C**ommission or a duly appointed hearing officer on the variance **petition** and the department's recommendation, as provided in section 260.400, RSMo.

(D) Non-Substantive Variance. If a variance **petition** is deemed

non-substantive, the department will comply with paragraph (5)(C)2. of this rule. The **Missouri Hazardous Waste Management** *[c]***C**ommission will hold a *[public]* **formal** hearing as provided in section 260.400, RSMo if requested by the petitioner. A request for a **formal** hearing may also be made by any aggrieved person if the department's recommendation is to grant the variance *[or grant the variance with conditions]* **with or without conditions**. Any request by the petitioner or aggrieved person for a *[public]* **formal** hearing shall be made in writing within thirty (30) days of the date *[that]* the **legal** notice *[of]* **regarding the** recommendation is published.

(E) Final Decision. *[If the commission makes a decision on a variance without a public hearing, the matter will be passed upon by the commission at a public meeting no sooner than thirty (30) days from the date of the recommendation.]* **If no formal hearing is requested, the Missouri Hazardous Waste Management Commission shall make a decision on the variance at a public meeting held no earlier than thirty (30) days from the date the legal notice regarding the recommendation was published.**

(F) Hearing Procedures. Any hearings under this section shall be a contested case pursuant to section 260.400 and Chapter 536, RSMo. The participants shall be the department, the petitioner, any aggrieved person who requests a **formal** hearing**,** and any person who files a timely application for intervention and is granted leave to intervene. Any person desiring to intervene shall file **an application to intervene** with the *[staff director of the commission an application]* **Missouri Hazardous Waste Management Commission secretary** within thirty (30) days *[of the date that the notice of]* **from the date the legal notice regarding the** recommendation is published.

1. The application to intervene shall state the interests of the *[applicant]* **intervener,** *[and]* the grounds upon which intervention is sought**,** and *[also shall contain]* a statement of the position that the *[applicant]* **intervener** desires to take in the proceeding. The *[applicant]* **intervener** shall serve a copy of the application to intervene on each of the parties listed in subsection (5)(F) of this rule.

2. The **Missouri Hazardous Waste Management** *[c]***C**ommission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The **Missouri Hazardous Waste Management** *[c]***C**ommission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(G) If the applicant fails to comply with the terms and conditions of the variance as specified by the Missouri Hazardous Waste Management Commission, the variance may be revoked or modified by the commission after a formal hearing held after no less than thirty (30) days' written notice. The department will notify all persons who will be subjected to greater restrictions if the variance is revoked or modified and each person who requested notice from the department.

*AUTHORITY: section[s] 260.370, **RSMo Supp. 2010 and sections** 260.400, 260.405**,** and 260.437, RSMo 2000. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 11—Used Oil

PROPOSED AMENDMENT

10 CSR 25-11.279 Recycled Used Oil Management Standards. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 279, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR parts 110.1, 112, and 279, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modification to 40 CFR part 279, incorporated by reference in section (1) of this rule. A person managing used oil shall comply with this section in addition to the regulations in 40 CFR part 279. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that Missouri additions, changes, or deletions to a particular lettered subpart in 40 CFR part 279 are noted in the corresponding lettered subsection of this section. For example, changes to 40 CFR part 279 subpart A are found in subsection (2)(A) of this rule.)

(A) Definitions. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart A.

1. The definition of do-it-yourselfer used oil collection center at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil collected from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

2. The definition of used oil at 40 CFR 279.1 is amended as follows:

A. Used oil includes, but is not limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for lubrication/cutting oil, heat transfer, hydraulic power, or insulation in dielectric transformers*[.]***;**

B. Used oil does not include petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under this chapter.)**; and**

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3, 4, 5, 6, 7, 8, 9, and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. The definition of "used oil aggregation point" at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

4. The definition of used oil collection center at 40 CFR 279.1 is amended to allow these centers to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

(B) Applicability. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart B.

1. 40 CFR 279.10(b)(2) is not incorporated in this rule.

2. Mixtures of used oil and hazardous waste are subject to the following:

A. Except as provided for in subparagraphs (2)(B)2.B. and C. of this rule, used oil that is mixed with hazardous waste shall be handled according to 10 CSR 25-3, 4, 5, 6, 7, 8, 9**,** and 13;

B. Used oil that is mixed with hazardous waste that solely exhibits the characteristic of ignitability or is mixed with a listed hazardous waste that is listed solely because it exhibits the characteristic of ignitability shall be managed as a used oil; provided that the subsequent mixture does not exhibit the characteristic of ignitability; and

C. A generator who generates and accumulates hazardous waste in amounts less than those described in 10 CSR 25-3.260(1)(A)25. shall handle mixtures of used oil with hazardous waste as a used oil.

3. 40 CFR 279.10(c) is modified as follows. Used oil drained or removed from materials containing or otherwise contaminated with used oil shall be managed as a hazardous waste if the used oil exhibits a hazardous characteristic. Any exclusions from the definition of solid waste or hazardous waste will apply.

*[3.]***4.** In 40 CFR 279.10(f), incorporated by reference in this rule, delete "subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater)" and in its place substitute "regulated under Chapter 644, RSMo, the Missouri Clean Water Law."

*[4.]***5.** In addition to the prohibitions of 40 CFR 279.12, incorporated by reference in this rule, the following shall apply:

A. All used oil is prohibited from disposal in a solid waste disposal area; and

B. Used oil shall not be disposed of into the environment or cause a public nuisance.

(C) Standards for Used Oil Generators. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart C.

1. In addition to the requirements of 40 CFR 279.20(a)(2), incorporated by reference in this rule, vessels on navigable waters, as defined in 40 CFR 110.1, shall not dispose of used oil into waters of the state except as allowed by Chapter 644, RSMo.

2. *[In addition to the requirements of 40 CFR 279.20, incorporated in this rule, the following shall apply:*

A. Except as provided in subparagraph (2)(C)2.B. of this rule, generators who process or re-refine used oil must also comply with 10 CSR 25-11.279(2)(F); and

B. Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specifications used oil fuel:

[(I) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(II) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management or discharge of wastewaters;

(III) Using oil mist collectors to remove small droplets of used oil from inplant air to make plant air suitable for continued recirculation;

(IV) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to 40 CFR 279.10(c), as incorporated in this rule; or

(V) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater pursuant to 40 CFR 279.23, as incorporated in this rule.] ***(Reserved)***

3. In 40 CFR 279.22(d), incorporated by reference in this rule, delete "the effective date of the authorized used oil program for the State in which the release is located," and insert in its place "the original effective date of 10 CSR 25-11.279."

4. In addition to the requirements at 40 CFR 279.23(a), generators also may burn in used oil space heaters used oil from farmers not regulated by 40 CFR part 279 subpart C.

5. In addition to the requirements at 40 CFR 279.23, incorporated in this rule, burning in a used oil space heater any mixture of used oil with a hazardous waste is prohibited, except that mixtures of used oil with hazardous waste originating from conditionally exempt small quantity generators of hazardous waste may be burned in used oil-fired space heaters, so long as the hazardous waste is hazardous solely because it exhibits the characteristic of ignitability.

6. Used oil generators shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

(D) Standards for Used Oil Collection Centers and Aggregation Points. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart D.

1. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points owned by the generator may accept used oil from farmers not regulated under 40 CFR part 279 subpart C.

2. In addition to the requirements of 40 CFR part 279 subpart D, do-it-yourselfer used oil collection centers, used oil aggregation points, and used oil collection centers shall notify the solid waste district in which they operate or the department's *[Technical Assistance]* **Hazardous Waste** Program of their used oil collection activities.

A. Notification shall be by letter and shall include the following:

(I) The name and location of the collection center;

(II) The name and telephone number of the owner/operator;

(III) The name and telephone number of the facility contact, if different from the owner/operator;

(IV) The type of collection center; and

(V) The dates and hours of operation.

B. The notification submitted by a used oil collection center will satisfy the requirement of 40 CFR 279.31(b)(2) that the used oil collection center be recognized by the state.

C. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points shall notify the solid waste district in which they operate or the department's *[Technical Assistance]* **Hazardous Waste** Program when their used oil collection activities cease.

D. The notifications to operate or cease to operate received by a solid waste district shall be transmitted to the department's *[Technical Assistance]* **Hazardous Waste** Program for public information purposes or be incorporated in the information submitted to the department as part of their regular reporting requirements.

3. No quantity of used oil collected by do-it-yourselfer oil collection centers, used oil collection centers, and used oil aggregation points shall be stored for more than twelve (12) months at the collection center or aggregation point.

4. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

5. Used oil collection centers, do-it-yourselfer used oil collection centers, and used oil aggregation points shall have a means of controlling public access to the used oil storage area.

A. Access control may be an artificial or natural barrier which completely surrounds the storage area*[,]* or access control may be achieved by storing the used oil inside a locked building.

B. An attendant shall be present when the public has access to the do-it-yourselfer used oil collection center, used oil collection center, and used oil aggregation point. No public access shall be allowed to the stored used oil when the collection center or aggregation point is unattended.

(I) Standards for Use as a Dust Suppressant and Disposal of Used Oil. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart I.

1. 40 CFR 279.81 is not incorporated in this rule. Instead of the requirements in 40 CFR 279.81, the following shall apply:

A. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be managed in accordance with 10 CSR 25-5, 6, 7, 9, and 13**, and release of even non-hazardous used oil into the environment is prohibited**; and

B. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be assigned the Missouri waste code number D098.

2. The use of used oil as a dust suppressant on a road, parking lot, driveway, or other similar surface is prohibited.

3. 40 CFR 279.82 is not incorporated in this rule.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010**. Original rule filed Jan. 5, 1994, effective Aug. 28, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 13—Polychlorinated Biphenyls

PROPOSED AMENDMENT

10 CSR 25-13.010 Polychlorinated Biphenyls. The commission is proposing to amend section (1) of this rule.

PURPOSE: The commission is updating the date for incorporated-by-reference material.

(1) The regulations set forth in 40 CFR parts 761.3, 761.30(a)(2)(v), 761.60(b)(1)(i)(B), 761.60(g), 761.65(b), 761.71, 761.79, 761.72, and 761.180(b), July 1, *[2006]* **2010**, as published by the Office of Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.395 and 260.396, RSMo 2000. Original rule filed Aug. 14, 1986, effective Jan. 1, 1987. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 16—Universal Waste

PROPOSED AMENDMENT

10 CSR 25-16.273 Standards for Universal Waste Management. The commission is proposing to amend sections (1) and (2).

PURPOSE: The commission is updating the date for incorporated-by-reference material and references to the ***Code of Federal Regulations*** *citations.*

(1) The regulations set forth in 40 CFR part 273, July 1, *[2006]* **2010**, and the changes made at 72 FR 35666, June 29, 2007, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Small and large quantity handlers of universal waste, universal waste transporters, universal waste collection programs, and owners/operators of a universal waste destination facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 273 incorporated in this rule. (Comment: This section has been organized such that Missouri additions or changes to a particular federal subpart are noted in the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 273 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 273 subpart A, the following regulations also apply:

1. *[Scope.*

A. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with all requirements for the universal waste in question and of an R2 Missouri-certified resource recovery facility recycling universal waste as described in 10 CSR 25-9.020(3)(A)3.;] ***(Reserved)***

2. Applicability—batteries.

A. The additional state specific requirements described in this rule do not apply to batteries as described in 40 CFR 273.2;

3. Applicability—pesticides.

A. 40 CFR 273.3(a)(2) is modified as follows: Stocks of other unused pesticide products that are collected and managed as part of a universal waste pesticide collection program, as defined in paragraph (2)(A)9. of this rule.

[(I) 40 CFR 273.3(c) is not incorporated in this rule, and this subparagraph describes when pesticides become wastes:

(a) A pesticide becomes a waste on the date the generator of a recalled pesticide agrees to participate in the recall;

(b) A pesticide becomes a waste on the date the person conducting a recall decides to discard the pesticide; and

(c) An unused pesticide product as described in 40 CFR 273.3(a)(2) becomes a waste on the date the generator permanently removes it from service.]

B. The words "or reclamation" in 40 CFR 273.3(d)(1)(ii) are not incorporated in this rule;

4. *(Reserved)*

5. *(Reserved)*

6. *(Reserved)*

7. *(Reserved)*

8. Applicability—household and conditionally exempt small quantity generator waste.

A. In addition to the requirements of 40 CFR 273.8(a)(1) incorporated in this rule, household hazardous wastes which are of the same type as universal wastes defined at 40 CFR 273.9 as amended by paragraph (2)(A)9. of this rule, and which are segregated from the solid waste stream must either be managed in compliance with this rule or 10 CSR 25-4.261(2)(A)10.;

9. Definitions.

A. *[Universal waste—In lieu of the definition of "Universal waste" in 40 CFR 273.9, the following definition shall apply: "Universal waste" means batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3 as modified by paragraph (2)(A)3. of this rule, mercury-containing equipment as described in 40 CFR 273.4, and lamps as described in 40 CFR 273.5.]* ***(Reserved)***

B. Universal Waste Pesticide Collection Program—a Missouri universal waste pesticide collection program is any site where stocks of unused pesticide products are collected and managed. The collection program may accept unused pesticide products from both small and large quantity handlers of universal waste pesticides, universal waste transporters, and other universal waste pesticide collection programs. The collection program must operate in compliance with the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri and submit a Letter of Intent to the director of the Hazardous Waste Program at least fourteen (14) days prior to accepting unused pesticide products. The Letter of Intent shall contain all of the following:

(I) The name of the organization/agency sponsoring the collection program;

(II) Name, telephone number, and address of a contact person responsible for operating the collection program;

(III) Location of the collection program; and

(IV) Date and time of the collection.

(B) Standards for Small Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart B, the following regulations also apply except that additional state specific requirements do not apply to batteries as described in 40 CFR 273.2, as incorporated in this rule:

1. In addition to the requirements of 40 CFR 273.11, a small quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving small quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. The phrase "or received from another handler" in 40 CFR 273.15(a) in regards to universal waste pesticides is not incorporated in this rule **because in Missouri small quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a small quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

3. In 40 CFR 273.18(a), with respect to universal waste pesticides, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

4. *[In addition to the requirements of 40 CFR 273.18(a) through (c) as modified in paragraphs (2)(B)2. through (2)(B)4. and incorporated in this rule, in regards to universal waste pesticides,]* **Subsections 40 CFR 273.18(d) through (g) are not incorporated in this rule in regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. I***[i]***f a shipment of universal waste pesticides is rejected by the Missouri-certified resource recovery facility or destination

facility, the originating handler must either*[:]*—

A. Receive the waste back when notified that the shipment has been rejected; or

B. Send the pesticides to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

5. *[40 CFR 273.18(d) through (g) is not incorporated in this rule in regards to universal waste pesticides;]* ***(Reserved)***

6. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.20, as incorporated in this rule. The state may not assume authority from the **Environmental Protection Agency (**EPA**)** to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(C) Standards for Large Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart C, the following regulations also apply:

1. In addition to the requirements of 40 CFR 273.31, a large quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving large quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) as modified by 10 CSR 25-16.273(2)(A)3. and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify EPA for those recalled universal waste pesticides under this section;

3. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34;

B. Ensure that the area in which containers are stored is ventilated;

4. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34;

B. Ensure that the area in which containers are stored is ventilated; and

C. Ensure that employees handling universal waste lamps are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spillage or released material into appropriate containers;

5. In 40 CFR 273.35(a) and (b), the phrase "or received from another handler" is not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

6. In 40 CFR 273.35(c)(1) through (c)(6), the phrases "or is received" and "or was received" are not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the requirements for marking, labeling, and accumulation time limits that are specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

7. In 40 CFR 273.38(a), with respect to pesticide, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

8. *[In addition to the requirements of 40 CFR 273.38(a) through (c) incorporated by reference and modified by this section,]* **40 CFR 273.38(d) through (f) are not incorporated in this rule with regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. I***[i]*f a shipment of universal waste pesticides from a large quantity generator is rejected by the Missouri-certified resource recovery facility or destination facility, the original handler must either*[:]*—

A. Receive waste back when notified that the shipment has been rejected; or

B. Send the waste to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

9. *[40 CFR 273.38(d) through (f) is not incorporated in this rule with regards to universal waste pesticides;]* ***(Reserved)***

10. 40 CFR 273.39(c)(1) is not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from receiving shipments of universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the record retention requirements that are specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

11. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.40, as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(G) In addition to the requirements in 40 CFR 273*[.80]* subpart G, any person seeking to add a hazardous waste or a category of hazardous waste to this rule shall*[:]*—

1. Comply with those provisions of section 536.041, RSMo**,** that describe a petition process to adopt, amend, or repeal any rule.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010****. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed March 31, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective June 30, 2009. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 1—Underground and Aboveground Storage Tanks—Organization

PROPOSED RULE

10 CSR 26-1.010 Organization

PURPOSE: This rule provides a description of this division and explains the methods and procedures whereby the public may obtain information or make submissions or requests regarding the rules in this division.

(1) For ease of administration, and to assist the regulated community and the general public, the Missouri Hazardous Waste Management Commission and the Missouri Clean Water Commission have jointly decided to assemble their rules relating to underground and aboveground storage tanks into one division of the *Code of State Regulations*, Division 26. These rules are organized as follows:

(A) Rules pertaining to underground storage tanks are contained in Chapters 2, 3, and 4 of Division 26 and are under the authority of the Missouri Hazardous Waste Management Commission, in accordance with sections 319.109 and 319.137, RSMo; and

(B) Rules pertaining to aboveground storage tanks are contained in Chapter 5 of Division 26 and are under the authority of the Missouri Clean Water Commission, in accordance with sections 644.026 and 644.143, RSMo.

(2) Day-to-day administration of these rules is carried out by the Department of Natural Resources' Hazardous Waste Program. Requests for copies of these rules or other information about implementation of these rules are to be submitted to the Department of Natural Resources, Hazardous Waste Program, PO Box 176, Jefferson City, MO 65102.

(3) Additional information about the Hazardous Waste Management Commission and its operations may be found at 10 CSR 25-1.010, 10 CSR 25-2.010, and 10 CSR 25-2.020. Additional information about the Clean Water Commission and its operations may be found at 10 CSR 20-1.010 and 10 CSR 20-1.020.

AUTHORITY: section 536.021, RSMo Supp. 2010. Original rule filed April 15, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 2—Underground Storage Tanks—Technical Regulations

PROPOSED RULE

10 CSR 26-2.019 New Installation Requirements

PURPOSE: This rule sets the standards that installations and installers of new underground storage tank systems must meet.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Any installer who intends to install an underground storage tank (UST) system for storage of a regulated substance must, at least thirty (30) days before installing the tank, notify the department by letter of the intent to install a UST. The notification must provide the tank owner's name, installer name, the name and location of the facility where the UST will be installed, the date that the installation is expected to commence, the date that the tank is expected to be brought in-use, UST system information, including tank material, size, manufacturer, piping material, tank and piping type and manufacturer, release detection equipment, and spill and overfill equipment. The installation notice is valid for one hundred eighty (180) days from receipt by the department and only for the UST system(s) listed on the notice. If installation does not commence within one hundred eighty (180) days of the date on which the department received the notice, a new installation notice must be submitted prior to commencing installation activities.

(2) Installers must document compliance with all manufacturer certification or training requirements for tank, piping, release detection

equipment, and spill and overfill equipment installed.

(3) Installers and manufacturers must have a current financial responsibility mechanism filed with the Missouri Department of Agriculture, in accordance with 2 CSR 90-30.085, at the start and until completion of installation of the underground storage tank system.

(4) Prior to installation of an UST intended to be used for storage of a regulated substance, the tank and associated piping must be tested, inspected, and measured in accordance with the manufacturer's requirements and in accordance with the pre-installation inspection, testing, and/or backfilling sections of either—

(A) American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or

(B) Petroleum Equipment Institute's Recommended Practice 100-2011, *Installation of Underground Liquid Storage Systems*, 2011 Edition. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

(5) Tanks, piping, and equipment must comply with the new system requirements in 10 CSR 26-2.020. Installations shall be conducted in accordance with all manufacturers' requirements and in accordance with either—

(A) American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or

(B) Petroleum Equipment Institute's Recommended Practice 100-2011, *Installation of Underground Liquid Storage Systems*, 2011 Edition. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

(6) Should one (1) or more of a manufacturer's requirements contradict the recommended industry practice(s), the manufacturer's requirements shall be followed. Backfill materials must meet tank and piping manufacturers' specifications.

(7) The tank and piping system must pass a 0.1 gallon/hour system tightness test before the system is brought in operation.

(8) Until the installation is complete and the system is released by the installer to the owner/operator, the tank shall be monitored for leaks daily by using either—

(A) An approved release detection method, in accordance with 10 CSR 26-2.043; or

(B) Daily Inventory Liquid Measurements. Upon completion of initial post-installation tightness testing, daily measurements are based on the average of two (2) consecutive stick readings. A variation of no greater than twenty-six (26) gallons per week is allowed. Any suspected release, alarm, or inconclusive or failure result from these release detection methods must be reported and investigated in accordance with 10 CSR 26-2.050.

(9) Upon the department's discovery of an installation that is not in compliance with the requirements of this rule, the department's authorized representative may require that the installation remain open and uncovered, or that no additional UST system work be conducted, until—

(A) The manufacturer approves the installation that deviates from their written guidelines, specifications, and instructions;

(B) The owner approves the installation; and

(C) The department approves the installation.

(10) Any equipment repairs necessary during the installation must be manufacturer certified or approved, with supporting written documentation from the manufacturer.

(11) Certification of Installation. All installers must ensure that one (1) or more of the following methods of certification, testing or inspection is used to demonstrate compliance with this rule by providing a certification of compliance:

(A) The installation has been inspected and approved by the department;

(B) All work listed in the manufacturer's installation checklists has been completed and submitted to the department; or

(C) The installer has complied with another method for ensuring compliance with this rule that is determined by the department to be no less protective of human health and the environment.

AUTHORITY: sections 319.105, RSMo 2000. Original rule filed April 15, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement Practices

PROPOSED RESCISSION

20 CSR 100-1.060 Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans. This rule effectuated or aided in the interpretation of section 375.1007, RSMo 2000, and sections 376.383 and 376.384, RSMo Supp. 2008.

PURPOSE: This rule is being rescinded because it conflicts with the underlying statute, section 376.383, RSMo, which was amended by HB 1498 (2010). The provisions of the amended statute supersede many of the provisions of the current regulation.

AUTHORITY: section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008. Original rule filed Sept. 5, 2008, effective May 30, 2009. Rescinded: Filed April 8, 2011.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rescission at 9:30 a.m. on June 21, 2011. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rescission until 5:00 p.m. on June 24, 2011. Written statements shall be sent to Carolyn Kerr, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-2619 at least five (5) working days prior to the hearing.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 1—Organization and Description

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 536.023, RSMo Supp. 2010, the director amends a rule as follows:

2 CSR 30-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1845). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry, and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1845–1846). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Four (4) comments were received on the proposed amendment.

COMMENT #1: Dale Ridder, Hermann, MO, states absolute objection to the proposed rule as currently written and urges the Department of Agriculture to put a hold on the proposed amendment until the technology to better predict false-positives becomes available or to at least allow for a procedure to remove the "death sentence" of a potential false-positive Trich test from bulls and Missouri breeders. The producer agrees with the intent of curtailing the spread of Trichomoniasis in Missouri but it is absolutely unfair to do so based on one (1) positive test with no collaborative test, and no chances of ever reversing a test which current research indicates can and does have false-positives. The real private cost in time and dollars would exceed five hundred dollars ($500) and has already exceeded this producer twenty thousand dollars ($20,000). This does not take into consideration potential future sales of semen and breeding animals. In an article published in JAVMA, Vol. 237, No. 9, November 1, 2010 pages 1068–1073, authored by Ondrak et al., states "This provides further evidence that sporadic false-positive results detected by the use of culture, gel PCR assay, and real=time PCR assay can occur." Other false-positives were reported by Cobo et al. in their 2007 research. Ondrak indicates that the unnecessary sale and slaughter of false-positive bulls would substantially increase the financial impact of T foetus outbreaks.

RESPONSE: The research conducted by E.R. Cobo, et al., was attempting to determine the specificity and sensitivity of the Polymerase Chain Reaction (PCR) and culture utilized in different testing protocols to establish the most efficient and accurate method of testing bulls for *Tritrichomonas foetus*. The current gold-standard testing protocol consists of six (6) weekly cultures, which is expensive and time consuming for the producers. The study concluded PCR or both tests applied in parallel on three (3) consecutive weeks may be as sensitive and specific as the gold-standard. The research concluded the sensitivity and specificity of the gold-standard test was 87.7% (Se) and 97.5% (Sp) compared to PCR and culture combined on a single sample the sensitivity was 78.3% and specificity was 98.5%. The sensitivity of the PCR was found to be seventy-eight percent (78%), which would indicate the test was not able to identify 22/100 positive bulls and would identify their status as negative. The specificity of the combination (98.5%) would predict approximately 1.5 bulls tested out of 100 would be false positives, given the prevalence of the disease in the general population is comparable to the animals tested. The prevalence of Trichomoniasis in the general population is predicted to be between three percent to five percent (3%–5%), this corresponds to the current prevalence of disease in our sample submissions.

The objective of the research published in JAVMA, Vol. 237, No. 9, November 1, 2010, was to determine whether the percentage of nonpregnant cows was associated with the percentage of bulls infected with *Tritrichomonas foetus*. The results cite a similar conclusion to the aforementioned research conducted by E.R. Cobo, which determined a combination of culture and PCR (this study utilizes gel PCR) was comparable to the gold-standard testing protocol. The study does not discuss how it was determined the RT-PCR yielded three (3) false positives out of one hundred twenty-one (121) bulls.

Research conducted by Michael S.Y. Ho, et al. in 1993, published in the Journal of Clinical Microbiology, Jan. 1994, evaluated a method to increase the accuracy of the diagnosis of *Tritrichomonas foetus* by developing a more sensitive testing protocol through the utilization of

PCR technology. The need for the technology was due to the low sensitivity ten percent to forty-eight percent (10%–48%) of the traditional method of culturing and microscopic examination to identify the parasite, thus several positive bulls were classified as negative. The study concluded the PCR protocol was able to detect as few as one (1) parasite in culture media or ten (10) parasites in bovine preputial smegma. The analysis of fifty-two (52) samples showed that forty-seven (47) (90.4%) were correctly identified, with no false-positive results. In comparison, the culture method detected 44/52 (84.6%), thus classifying three (3) positive bulls as negative.

In 2002, the PCR assay was improved to increase the ability of the test to identify positive bulls, as described in the research conducted by D. Douglas Nickel, et al. The improved assay identified four (4) positive bulls out of eight hundred forty-seven (847) samples, compared to three (3) positive bulls utilizing the culture method. The increased sensitivity of the PCR decreases the possibility of misdiagnosis of a positive animal. The results were repeated and the positive samples were verified.

Dr. James A. Kennedy, a co-author on the research conducted by E. R. Cobo, has published research advocating the utilization of pooled samples utilizing PCR to detect *Tritrichomonas foetus* to decrease the cost to producers. He identifies a "pitfall" of the culture method is the low specificity, thus high number of false-positives. The standard protocol to verify culture positive animals utilizes the PCR to differentiate the *Tritrichomonas foetus* parasite from other trichomonad organisms. The PCR assay has the ability to identify a particular sequence of DNA of the *Tritrichomonas foetus*, this sequence is unique to this specific *Tritrichomonas spp*. Dr. Kennedy's research states the PCR identified sixteen (16) out of sixty-one (61) pools (five (5) samples combined), identifying two (2) pools containing samples that had previously been considered negative by culture.

Research has proven the PCR assay has the ability to detect the *Tritrichomonas foetus* parasite when only a few organisms are present. The ability to obtain and maintain the quality of a sample prior to arrival at a diagnostic laboratory and the inability to accurately detect and diagnose Trichomoniasis in infected bulls has been detrimental to the control and eradication of the disease. The incidence of false-positive results is extremely low, especially in comparison to other diagnostic tests we currently or have utilized in previous years to eradicate financially devastating livestock diseases, i.e., brucellosis, tuberculosis. The financial impact to producers by inaccurately diagnosing a negative bull can be tremendous.

Positive bulls remain carriers for life, except for the five percent (5%) of bulls less than thirty (30) months of age which one (1) research study has indicated may clear the parasite due to the lack of depth in the crypts of their sheath. However, this theory is controversial among the experts in the field of Trichomoniasis and additional research is needed to validate the findings. This represents a very small number of bulls.

Research has proven virgin bulls may become infected if comingled with positive bulls due to naturally occurring homosexual activity (Sarah Parker, et al., 2003).

The Texas and UMC laboratory utilize the same PCR assay protocol to analyze the samples for *Tritrichomonas foetus*. The Ct value determines the presence or absence of the parasite, 35–40 (TX) or 35–37 (UMC) have been established as the range for "suspect" samples. The owners/veterinarians are contacted and the lab recommends the animal is retested. The animals below thirty-five (35) are classified as positive and samples above thirty-seven (37) (UMC) or forty (40) (TX) are designated as negative. The UMC laboratory has identified a trichomonad organism in the samples that had been classified as "suspect" upon analysis of results and attempting to determine the reason of the "suspect" category. Since the discovery of this organism, all the samples with Ct values of 32–41 have been sequenced out and were all identified as *Tritrichomonas foetus*, thus eliminating the possibility of any false-positive results being reported.

The Texas Animal Health Commission classifies any RT-PCR positive bull as infected with Trichomoniasis. Positive bulls are quarantined and transported directly to slaughter on a VS 1-27 permit or to a livestock market for slaughter only on a VS 1-27 permit.

The department has considered this comment and will not make a change to the proposed regulations.

COMMENT #2: Dr. Charles T. Winslow, Lamar Animal Clinic, commented that the importation of feral swine into Missouri is unneeded and unnecessary, and therefore, should be restricted to the same entry allowance as breeding bulls testing positive for Trichomoniasis. Questioned what penalties would be given people who either import Trich positive bulls or feral swine without OCVs, etc. but suspected few if any feral swine importers will find the time to abide by these rules and that feral swine importation may be mostly done with disregard to the revised law so perhaps a figure of more than five hundred dollars ($500) should be included in the cost of the change to enforce the new regulation and/or educate the citizens who may import feral swine. If these revisions are accepted, it would be interesting to know how many entry permits are granted by the state of Missouri for importation of feral swine each year and is this information available to the public.

RESPONSE: Currently feral swine are not allowed to enter into Missouri; however, during the last legislative session legislation was introduced and passed enabling feral swine to move into Missouri. The new regulations reflect the change and require the owners to obtain a permit prior to movement. The legislation did not give us the authority to assess a fee to those not adhering to the regulations. No changes were made as a result of this comment.

COMMENT #3: Dr. Charles Massengill commented that in 2 CSR 30-2.010(4)(D)1.B. that references is made to "approved laboratory." How can a veterinarian in another state determine if the laboratory they rely on is "approved" by the state veterinarian? He suggested the requirement be changed to "laboratory approved by the AAVLD." This way laboratories will already know if they are approved and can share this information with their client. Also, in 2 CSR 30-2.010(15), reference is made to "all aquaculture entering Missouri. . ." and that the intent is to address all aquatic animals entering Missouri. However, aquaculture is a process or practice.

RESPONSE: The department has reviewed the comment regarding the approved laboratory and feels that the current language includes any laboratory approved by the AAVLD and the language will remain the same. In response to the comment on section (15) Aquaculture, the department has reviewed and according to statute 277.024, RSMo 2000, aquaculture is classified as livestock and therefore referred to as aquaculture. No changes were made to this section.

COMMENT #4: Upon further administrative review, potbelly pigs are covered by current regulations and will be removed from the section regarding feral swine, and section (16) regarding large carnivores needs further guidance than what is noted.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will remove this section at this time to make the suggested change.

2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry, and Exotic Animals Entering Missouri

(5) Swine.

(A) Swine are classified as the following:

1. Commercial swine—swine that are continuously managed and have adequate facilities and practices to prevent exposures to feral swine;

2. Feral swine—any swine that are free roaming or Russian and Eurasian that are confined. This also includes javelinas and peccaries; and

3. Transitional swine—swine raised on dirt or that have reasonable opportunities to be exposed to feral swine.

(D) All feral swine (including Eurasian and Russian swine) entering Missouri must—

1. Obtain an entry permit;

2. Be officially identified;

3. Be listed individually on a Certificate of Veterinary Inspection, in addition to age, gender, and permit number of feral swine facility of destination;

4. Must be from a validated and qualified herd; last test date and herd numbers must be listed on the Certificate of Veterinary Inspection; or

5. Have two (2) negative tests sixty (60) days apart for brucellosis and pseudorabies within thirty to sixty (30–60) days prior to movement. The laboratory and test date must be listed on the Certificate of Veterinary Inspection.

6. Feral swine moving directly from the farm-of-origin to an approved processing facility or to an approved slaughter-only facility will be exempt from any required testing.

(16) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration, and the permanent identification.

(A) Elephants (Asiatic, African) must test negative for tuberculosis within one (1) year prior to entry.

(B) Importation of skunks and raccoons into Missouri is prohibited by the Missouri Wildlife Code, 3 CSR 10-9.

(C) No tests are required for animals moving between publicly-owned American Zoos and Aquariums (AZA)-accredited zoos but must be accompanied by a Certificate of Veterinary Inspection. Cervids moving between publicly-owned AZA-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subsection (10)(E). An entry permit is required on all animals moving between publicly-owned American Zoos and Aquariums (AZA)-accredited zoos.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry, and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of Agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1846–1848). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Five (5) comments were received.

COMMENT #1: Dale Ridder, Hermann, MO, states absolute objection to the proposed rule as currently written and urges the Department of Agriculture to put a hold on the proposed amendment until the technology to better predict false-positives becomes available or to at least allow for a procedure to remove the "death sentence" of a potential false-positive Trich test from bulls and Missouri breeders. The producer agrees with the intent of curtailing the spread of Trichomoniasis in Missouri but it is absolutely unfair to do so based on one (1) positive test with no collaborative test, and no chances of ever reversing a test which current research indicates can and does have false positives. The real private cost in time and dollars would exceed $500 (five hundred dollars) and has already exceeded this producer $20,000 (twenty thousand dollars). This does not take into consideration potential future sales of semen and breeding animals. In an article published in JAVMA, Vol. 237, No. 9, November 1, 2010 pages 1068-1073, authored by Ondrak et al., states "This provides further evidence that sporadic false-positive results detected by the use of culture, gel PCR assay, and real=time PCR assay can occur." Other false-positives were reported by Cobo et al. in their 2007 research. Ondrak indicates that the unnecessary sale and slaughter of false-positive bulls would substantially increase the financial impact of T foetus outbreaks.

RESPONSE: The research conducted by E.R. Cobo, et al., was attempting to determine the specificity and sensitivity of the PCR and culture utilized in different testing protocols to establish the most efficient and accurate method of testing bulls for *Tritrichomonas foetus*. The current gold-standard testing protocol consists of six (6) weekly cultures, which is expensive and time consuming for the producers. The study concluded PCR or both tests applied in parallel on three (3) consecutive weeks may be as sensitive and specific as the gold-standard. The research concluded the sensitivity and specificity of the gold-standard test was 87.7% (Se) and 97.5% (Sp) compared to PCR and culture combined on a single sample the sensitivity was 78.3% and specificity was 98.5%. The sensitivity of the PCR was found to be 78%, which would indicate the test was not able to identify 22/100 positive bulls and would identify their status as negative. The specificity of the combination (98.5%) would predict approximately 1.5 bulls tested out of 100 would be false positives, given the prevalence of the disease in the general population is comparable to the animals tested. The prevalence of Trichomoniasis in the general population is predicted to be between three percent to five percent (3%–5%), this corresponds to the current prevalence of disease in our sample submissions.

The objective of the research published in JAVMA, Vol 237, No. 9, November 1, 2010, was to determine whether the percentage of nonpregnant cows was associated with the percentage of bulls infected with *Tritrichomonas foetus*. The results cite a similar conclusion to the aforementioned research conducted by E.R. Cobo, which determined a combination of culture and PCR (this study utilizes gel PCR) was comparable to the gold-standard testing protocol. The study does not discuss how it was determined the RT-PCR yielded three (3) false-positives out of one hundred twenty-one (121) bulls.

Research conducted by Michael S.Y. Ho, et al. in 1993, published in the Journal of Clinical Microbiology, Jan. 1994, evaluated a method to increase the accuracy of the diagnosis of *Tritrichomonas foetus* by developing a more sensitive testing protocol through the utilization of PCR technology. The need for the technology was due to the low sensitivity ten percent to forty-eight percent (10%–48%) of the traditional method of culturing and microscopic examination to identify the parasite, thus several positive bulls were classified as negative. The study concluded the PCR protocol was able to detect as few as one (1) parasite in culture media or ten (10) parasites in bovine preputial smegma. The analysis of fifty-two (52) samples showed that forty-seven (47) (90.4%) were correctly identified, with no false-positive results. In comparison, the culture method detected 44/52 (84.6%), thus classifying three (3) positive bulls as negative.

In 2002, the PCR assay was improved to increase the ability of the test to identify positive bulls, as described in the research conducted by D. Douglas Nickel, et al. The improved assay identified four (4) positive bulls out of eight hundred forty-seven (847) samples, compared to three (3) positive bulls utilizing the culture method. The increased sensitivity of the PCR decreases the possibility of misdiagnosis of a positive animal. The results were repeated and the positive samples were verified.

Dr. James A. Kennedy, a co-author on the research conducted by E. R. Cobo, has published research advocating the utilization of pooled samples utilizing PCR to detect *Tritrichomonas foetus* to decrease the cost to producers. He identifies a "pitfall" of the culture method is the low specificity, thus high number of false-positives.

The standard protocol to verify culture positive animals utilizes the PCR to differentiate the *Tritrichomonas foetus* parasite from other trichomonad organisms. The PCR assay has the ability to identify a particular sequence of DNA of the *Tritrichomonas foetus*, this sequence is unique to this specific *Tritrichomonas spp*. Dr. Kennedy's research states the PCR identified sixteen (16) out of sixty-one (61) pools (five (5) samples combined), identifying two (2) pools containing samples that had previously been considered negative by culture.

Research has proven the PCR assay has the ability to detect the *Tritrichomonas foetus* parasite when only a few organisms are present. The ability to obtain and maintain the quality of a sample prior to arrival at a diagnostic laboratory and the inability to accurately detect and diagnosis Trichomoniasis in infected bulls has been detrimental to the control and eradication of the disease. The incidence of false-positive results is extremely low, especially in comparison to other diagnostic tests we currently or have utilized in previous years to eradicate financially devastating livestock diseases, i.e., brucellosis, tuberculosis. The financial impact to producers by inaccurately diagnosing a negative bull can be tremendous.

Positive bulls remain carriers for life, except for the five percent (5%) of bulls less than thirty (30) months of age which one (1) research study has indicated may clear the parasite due to the lack of depth in the crypts of their sheath. However, this theory is controversial among the experts in the field of Trichomoniasis and additional research is needed to validate the findings. This represents a very small number of bulls.

Research has proven virgin bulls may become infected if co-mingled with positive bulls due to naturally occurring homosexual activity (Sarah Parker, et al., 2003).

The Texas and UMC laboratory utilize the same PCR assay protocol to analyze the samples for *Tritrichomonas foetus*. The Ct value determines the presence or absence of the parasite, 35–40 (TX) or 35–37 (UMC) have been established as the range for "suspect" samples. The owners/veterinarians are contacted and the lab recommends the animal is retested. The animals below thirty-five (35) are classified as positive and samples above thirty-seven (37) (UMC) or forty (40) (TX) are designated as negative. The UMC laboratory has identified a trichomonad organism in the samples that had been classified as "suspect" upon analysis of results and attempting to determine the reason of the "suspect" category. Since the discovery of this organism, all the samples with Ct values of 32–41 have been sequenced out and were all identified as *Tritrichomonas foetus*, thus eliminating the possibility of any false-positive results being reported.

The Texas Animal Health Commission classifies any RT-PCR positive bull as infected with Trichomoniasis. Positive bulls are quarantined and transported directly to slaughter on a VS 1-27 permit or to a livestock market for slaughter only on a VS 1-27 permit.

The department has considered this comment and will not make a change to the proposed regulations.

COMMENT #2: Neal Hendrix commented that setting up rules that could result in the slaughter of bulls is premature. Given the economic damage that trich can do to an operation, unbiased education of producers may be the first step along with using proven, reliable, and verifiable testing procedures. After these steps are accomplished, it will be possible to get a handle on the scope of this problem within the state.

RESPONSE: I am unaware of the seven (7) false-positives or how Mr. Hendrix has determined the bulls are not infected with *Tritrichomonas foetus*. However, regarding the possibilities of false-positives animals, please refer to the response to Mr. Ridder's comments. The Department of Agriculture (MDA) has been proactive in utilizing opportunities to educate and enlighten livestock producers and veterinarians throughout the state regarding the need to implement biosecurity to protect their herds from this financially devastating disease. We have provided continuing education to veterinarians to enhance their ability to obtain quality samples and implement prevention and control management protocols. The MDA veterinarians have spoke to several producer groups, including a purebred production sale, to increase the awareness of trichomoniasis to livestock producers. The department has considered this comment and will not make a change.

COMMENT #3: Carroll Craig commented in favor of testing of bulls for trich beginning at age one (1) and if a bull tested positive, he should be branded and the herd should be quarantined until they have cleaned up or sold for slaughter. Bulls should be tested and found negative before sold through a sale barn; if positive, they should be sent to slaughter.

RESPONSE: The department appreciates this comment. This disease can be the most financially devastating to the Missouri cattlemen since brucellosis.

COMMENT #4: Dr. Chuck Massengill presented several comments on the proposed changes:

Comment #1: Subsection (1)(D) and the exclusion of exotic bovids. Through several of the definitions, reference is made to "bovines." If the intent was to address only cattle and bison, why not refer to cattle and bison? Comment #2: Subparagraph (1)(D)5.C. addresses female bovines from a *T.foetus herd*. There is not a provision for release of quarantine for a herd that does not have bulls. Possibly there needs to be a clarification on how a herd can be released from quarantine. Comment #3: Paragraph (1)(D)2. should not the statement read "the absence of" rather than "the presence of" both permanent central incisor teeth in wear. The presence and in wear of the central incisors is an indication that the animal is at least twenty-four (24) months old in our livestock market regulations. Comment #4: Part (1)(D)5.B.(I) that the department would reconsider the requirement of identifying positive *T.foetus* with a "V" brand on the left jaw by an accredited veterinarian. Comment #5: Questioned the use of the undefined stand alone term "*T.foetus*" to assign a status requiring regulatory action might need attention. Comment #6: Regarding feral swine proposed regulations, paragraph (2)(D)1. that swine moving within Missouri required an entry permit and that owners of pot bellied pigs in Missouri have a feral swine permit number and individuals that keep pot bellied pigs in their houses and yards will meet the requirements for that facility permit. Also, how can two tests be sixty (60) days apart and occur within thirty to sixty (30–60) days prior to movement.

RESPONSE AND EXPLANATION OF CHANGE: Comment #1—exclusion of exotic bovids. The department has reviewed and considered this comment and is convinced that the title in the proposed rulemaking provides clarity and the rule will remain as is. Comment #2—In response to 2 CSR 30-2.020(1)(D)5.C., the department has reviewed and considered this comment and agrees that the proposed rule lacks clarity. The department has rewritten this section to address clarity issues. Comment #3—the presence or absence of the central incisiors. The department has reviewed and considered this comment and will not make a change. The current language is taken from and in compliance with federal regulations. Comment #4—The department has reviewed and considered this comment and is in agreement with the commenter. The department has rewritten this section to address identification of positive animals. Comment #5—the department has reviewed this comment and agrees for clarification that "*T.foetus"* will be spelled out. Comment #6—The department has reviewed and considered this comment. A change with the proposed rule will be made accordingly.

COMMENT #5: Upon departmental review, Dr. Hagler recommended that positive *Tritrichomonas foetus* test results be reported to the state veterinarian within seventy-two (72) hours. Additional departmental review of proposed paragraph (1)(D)5. regarding quarantine requirements needed further clarification. Also, section (11) regarding large carnivores needs further guidance than what is noted.

RESPONSE AND EXPLANATION OF CHANGE: The state veterinarian agrees that positive *Tritrichomonas foetus* test results should be reported within seventy-two (72) hours and will include a reporting period in the regulations and agrees with the change to the quarantine requirements. The department agrees with the comment regarding section (11) and will remove this section at this time.

2 CSR 30-2.020 Movement of Livestock, Poultry, and Exotic Animals Within Missouri

(1) Cattle, Bison, and Exotic Bovids.

(D) Trichomoniasis (Excluding Exotic Bovids).

1. Definitions.

A. Official laboratory—Veterinary Diagnostic Laboratory operated and under the direction of the state veterinarian, University of Missouri Veterinary Medical Diagnostic Laboratory, or other diagnostic laboratories approved by the state veterinarian.

B. Positive Trichomoniasis (*Tritrichomonas foetus*) bull—male bovine which has ever tested positive for Trichomoniasis (*Tritrichomonas foetus*).

C. Trichomoniasis—venereal disease of cattle caused by the protozoan parasite species of *Tritrichomonas foetus*.

D. Positive Trichomoniasis (*Tritrichomonas foetus*) herd—group of bovines that have commingled in the previous breeding season and in which an animal (male or female) has had a positive diagnosis for *Tritrichomonas foetus*.

E. Negative Trichomoniasis (*Tritrichomonas foetus*) herd—a group of bovines that have been commingled in the previous breeding season and all test-eligible bulls have tested negative for *Tritrichomonas foetus* within the previous twelve (12) months.

F. Test-eligible animal—any bull at least thirty (30) months of age or any non-virgin bull that is sold, leased, bartered, or traded in Missouri.

G. Negative Trichomoniasis (*Tritrichomonas foetus*) bull—a bull from a negative Trichomoniasis herd with a series of three (3) negative cultures at least one (1) week apart or one (1) negative PCR test for *Trichomoniasis foetus* or two (2) negative PCR if commingled with a positive herd.

2. All breeding bulls (excluding exotic bovids) sold, bartered, leased, or traded within the state shall be—

A. Virgin bulls not more than twenty-four (24) months of age as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or

B. Tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test by an approved diagnostic laboratory within thirty (30) days prior to change in ownership or possession within the state.

(I) Bulls shall be tested three (3) times not less than one (1) week apart by an official culture test or one (1) time by an official PCR test.

(II) Shall be identified by official identification at the time the initial test sample is collected and the official identification recorded on the test documents.

(III) Bulls that have had contact with female cattle subsequent to or at the time of testing must be retested prior to movement.

C. The official identification, test results, date of test, test performed, and laboratory where test was performed should be included on the certificate of veterinary inspection.

3. If the breeding bulls are virgin bulls and less than thirty (30) months of age, they shall be—

A. Individually identified by official identification; and

B. Accompanied with a breeder's certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls.

C. The official identification number shall be written on the breeder's certificate.

4. Bulls going directly to slaughter are exempt from Trichomoniasis testing.

5. *Tritrichomonas foetus* positive herd—

A. Shall be quarantined or sold directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(I) Any non-virgin female or female twelve (12) months of age or older may be sold directly to slaughter and move on a VS 1-27 or remain quarantined.

(II) Positive bulls shall be sent directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(III) Positive animals shall be identified by a state-issued temper-evident eartag; and

B. The quarantine shall be released upon the following:

(I) All bulls in a positive *Tritrichomonas foetus* herd shall have tested negative to three (3) consecutive official *Tritrichomonas foetus* culture tests or two (2) consecutive official *Tritrichomonas foetus* PCR tests at least one (1) week apart. The initial negative test is included in the series of negative tests required; and

(II) Female(s) has a calf at side (with no exposure to other than known negative *Tritrichomonas foetus* bulls since parturition), has one hundred twenty (120) days of sexual isolation, or is determined by an accredited veterinarian to be at least one hundred twenty (120) days pregnant.

6. All positive *Tritrichomonas foetus* test results must be reported to the state veterinarian within seventy-two (72) hours of confirmation.

(2) Swine.

(A) Swine in Missouri are classified as follows:

1. Commercial swine—swine that are continuously managed and have adequate facilities and practices to prevent exposures to feral swine;

2. Feral swine—swine that are free roaming or Russian and Eurasian that are confined. This includes javelinas and peccaries; and

3. Transitional swine—swine raised on dirt or that have reasonable opportunities to be exposed to feral swine.

(D) All feral swine (including Eurasian and Russian) moving within Missouri must:

1. Obtain an entry permit;

2. Be officially identified;

3. Be listed individually on a Certificate of Veterinary Inspection, in addition to age, gender, and permit number of feral swine facility of destination;

4. Be from a validated and qualified herd, last test date, and herd numbers must be listed on the Certificate of Veterinary Inspection; or

5. Have two (2) negative tests sixty (60) days apart for brucellosis and pseudorabies within thirty to sixty (30–60) days prior to movement. The laboratory and test date must be listed on the Certificate of Veterinary Inspection.

6. Feral swine moving directly from the farm-of-origin to an approved processing facility or to an approved slaughter-only facility will be exempt from required testing.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1737–1738). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

The proposed policy rule incorporates the MEEIA rule by requiring the resource planning process to be in compliance with all legal mandates. This language is flexible in that it incorporates the MEEIA requirements and all future federal and state legal mandates. For that reason the commission has included language regarding compliance with legal mandates in section (2) of the rule as proposed.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the

commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition of "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.010(1). Ameren Missouri takes issue with the section that states the commission's policy goal in promulgating this chapter. The existing rule states that the chapter establishes a resource planning process "to ensure that the public interest is adequately served." The amendment would add "with a view to the public welfare, efficient facilities, and substantial justice between patrons and public utilities."

Ameren Missouri is concerned that the added terms are unclear, undefined, and unnecessary. Ameren Missouri suggests the new phrase simply be removed from the amendment. Alternatively, Ameren Missouri suggests the commission add "utility shareholders" to the list of considerations that make up the public interest.

In its comments at the hearing, staff explained that the new language is taken directly from section 386.610, RSMo 2000, which states that the provisions of the statute that establish the Public Service Commission should be "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

RESPONSE AND EXPLANATION OF CHANGE: In promulgating the rule changes regarding Chapter 22, the commission did not intend to modify its objective to protect the public interest. The new language quoting the statutory provision is therefore unnecessary and can only confuse future interpretation of the rule. Therefore, the commission will remove the new language from section (1) of this rule.

COMMENT #7: Changes to Section 4 CSR 240-22.010(2)—"rates" to "costs." The Department of Natural Resources suggests that the reference in section (2) to just and reasonable "rates" be changed to just and reasonable "costs," reasoning that "costs" is a more accurate description of the factor that has a direct effect on customers.

RESPONSE: The commission has statutory authority to set rates for the services provided by the utilities it regulates. Customers ultimately determine their costs for utility services based upon their personal decisions in response to the utility's service offerings. The commission will not change "rates" to "costs" in this section.

COMMENT #8: Changes to Section 4 CSR 240-22.010(2)—consistent with other policies. The Department of Natural Resources suggests that language be added indicating that the fundamental objective of the resource planning process should be consistent with state energy and environmental policies.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and will modify the section accordingly.

COMMENT #9: Changes to Subsection 4 CSR 240-22.010(2)(A). The Department of Natural Resources suggests that the subsection should be modified to reflect a priority for demand-side resources that result in all cost-effective demand-side savings. DNR further suggests that the subsection be modified to specifically include analysis of renewable energy and supply-side additions and retirements on an equivalent basis.

RESPONSE: The commission does not agree that demand-side resources should be given priority over supply-side resources. Section 393.1075.3, RSMo, establishes that it is the policy of this state to value demand-side investments equally to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22. The commission will not make the change proposed by DNR.

4 CSR 240-22.010 Policy Objectives

(1) The commission's policy goal in promulgating this chapter is to set minimum standards to govern the scope and objectives of the resource planning process that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served. Compliance with these rules shall not be construed to result in commission approval of the utility's resource plans, resource acquisition strategies, or investment decisions.

(2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall—

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1738–1741). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE AND EXPLANATION OF CHANGE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

To this end, the commission, as described below, is changing the definitions of realistic achievable potential and technical potential to be consistent with the MEEIA rule definitions and will add a definition for maximum achievable potential consistent with the MEEIA rule definition.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are more appropriate alternatives for pre-approval and

will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.020(5). This is a new section in the proposed amendment that adds a definition of "concern." The Department of Natural Resources would revise the definition of "concern" to eliminate the implication that a "concern" can be treated as less important than a "deficiency." DNR would also add a definition of "substantive concern" as part of its proposal to authorize commission acknowledgment.

Public counsel proposes the following change to the definition of "concern":

> Concern means concerns with the electric utility's compliance with the provisions of this chapter, and major concerns with the methodologies or analysis required to be performed by this chapter, and anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

Public counsel points out that the limited definition in the proposed rule does not make sense because it is not possible to determine ahead of time whether a deficiency in compliance with Chapter 22, or with the methodologies or analyses required, would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22. Such a determination cannot be made until the analysis is redone to correct for the deficiency in compliance with Chapter 22, or with the methodologies or analyses required, and the new analyses are reviewed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the change proposed by public counsel and will modify the definition of concern in the manner suggested by public counsel and will renumber the definition as section 4 CSR 240-22.020(6). This definition will be sufficient for acknowledgment as adopted by the commission.

COMMENT #7: Changes to Section 4 CSR 240-22.020(8). This section of the proposed amendment would add a definition of "deficiency." The Department of Natural Resources proposes an expanded definition of "deficiency" that would ensure that a "deficiency" would be subject to a broad definition. Ameren Missouri also proposes a change to the definition of "deficiency." Ameren Missouri's change would narrow the definition by making it clear that only substantial noncompliance with the requirements of the Chapter 22 rules would constitute a "deficiency." In its written comments, public counsel proposed the following revised definition:

> Deficiency means deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

Public counsel points out that the limited definition in the proposed rule does not make sense because it is not possible to determine ahead of time whether a deficiency in compliance with Chapter 22, or with the methodologies or analyses required, would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22. Such a determination cannot be made until the analysis is redone to correct for the deficiency in compliance with Chapter 22, or with the methodologies or analyses required, and the new analyses are reviewed.

RESPONSE AND EXPLANATION OF CHANGE: The commission does not believe that the changes proposed by DNR and Ameren Missouri are necessary and will not incorporate them in the rule. However, the commission agrees with the change proposed by public counsel and will modify the definition of deficiency in the manner suggested by public counsel. The definition will be renumbered as section (9) of this rule.

COMMENT #8: Changes to Section 4 CSR 240-22.020(27). This section of the proposed amendment adds a definition of "legal mandates." Public counsel would modify that definition to make it more consistent with provisions for calculations of economic impacts of alternative resource plans found in paragraph 4 CSR 240-22.060(4)(C)2. Specifically, public counsel would add "cost recovery mechanisms" to the definition, which would result in the legal mandates that affect cost recovery mechanisms being included as a legal mandate for the purposes of Chapter 22.

RESPONSE: The commission will modify the definition in the manner suggested by public counsel and will renumber the definition as section (28) of this rule. This will make meeting MEEIA and any future cost recovery legal mandates a fundamental objective of Chapter 22.

COMMENT #9: Changes to Section 4 CSR 240-22.020(35). Staff proposes to modify the definition of "lost revenues" to change "installed demand-side measures" to "installed end-use measures." Staff indicates this change is needed to make the definition consistent with other aspects of the rule. Public counsel indicated its support for this change.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the definition as suggested by staff and will renumber the definition as section (36) of this rule.

COMMENT #10: Changes to Section 4 CSR 240-22.020(36). In the proposed amendment, "major class" is defined as a "cost-of-service class of the utility." KCPL suggests that the commission instead define "major class" by economic sector—residential, commercial, and manufacturing. KCPL explains that it currently prepares its budgets and forecasts based on economic sectors. Requiring it to prepare separate budgets and forecasts based on its cost-of-service classifications would be duplicative and wasteful.

Staff responded to KCPL's argument at the hearing. Staff explains that there are advantages to using cost-of-service classes in that hourly load research data is at that level and small and large customer, which are impacted differently by economic conditions, are grouped separately.

RESPONSE: The commission agrees with its staff and will not modify the definition of major class. However, this section will be renumbered as section (37) of this rule.

COMMENT #11: Changes to the Definitions of Realistic Achievable, Maximum Achievable, and Technical Potential. The Department of Natural Resources proposes to replace the proposed definition of realistic achievable potential of a demand-side candidate resource option or portfolio with a definition drawn from the National Action Plan for Energy Efficiency (NAPEE) manual on best practices for analyzing demand-side potential. DNR contends its definition would better identify the specific considerations a utility should take into account when identifying the implementation level associated with realistic achievable potential.

RESPONSE AND EXPLANATION OF CHANGE: Substituting the NAPEE definition of achievable potential for the current definition of realistic achievable potential would create a very material change to the current proposed rules because the NAPEE definition of achievable potential is equivalent to the current proposed definition of maximum achievable potential. Using the NAPEE definitions will result in the most aggressive demand-side management (DSM) program scenarios possible (e.g., "providing end-users with payments for the entire incremental cost of more efficiency equipment") while maximum achievable potential in the current proposed rules assumes ". . . incentives that represent a very high portion of total program costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed." As noted in the NAPEE definition of achievable potential, changing the definitions assumes "the most aggressive program scenario possible." The commission believes substituting the definitions will result in an expectation of very high goals that are unrealistic and unattainable. Therefore, the commission will not adopt the NAPEE definition.

However, the commission notes that the definitions of realistic achievable potential and technical potential in the proposed amendment do not match the definitions of those terms found in the commission's MEEIA rules. The commission will, therefore, change those definitions in this rule so they match the definitions in the MEEIA rules. In addition, the commission will add a definition of maximum achievable potential for reasons more fully explained in Comment #11 in the Order of Rulemaking for 4 CSR 240-22.060. That new definition will also match the definition for that term in the MEEIA rules.

The new definition of maximum achievable potential will be added as section (40) of this rule. All subsequent sections of the rule will be renumbered accordingly.

COMMENT #12: Changes to Section 4 CSR 240-22.020(52). This section defines RTO as Regional Transmission Organization. Staff recommends the definition of RTO be expanded to include independent transmission system operators, reasoning that Ameren Missouri belongs to the Midwest Independent Transmission System Operator. Public counsel opposes this change as unnecessary because the Midwest Independent Transmission System Operator is an RTO and no change to the definition is needed to make it fit within the definition.

RESPONSE AND EXPLANATION OF CHANGE: The Midwest Independent Transmission Operator is an RTO, but the commission will adopt staff's recommendation so that it is clear to all persons reading the rule that the Midwest ISO is an RTO. This section will be renumbered as section (54) of this rule.

COMMENT #13: Changes to Section 4 CSR 240-22.020(53). This section defines "special contemporary issues." Staff proposes to modify that definition to make it consistent with the provisions of 4 CSR 240-22.080(4), which requires the commission to issue the list of contemporary issues. Public counsel supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission will incorporate the modification proposed by staff and will renumber this section (55) of this rule.

COMMENT #14: New Definition of Acknowledgment. As part of its proposal to include an option for the commission to acknowledge the reasonableness of a utility's resource plan, the Department of Natural Resources proposes the commission include a definition of acknowledgment.

RESPONSE AND EXPLANATION OF CHANGE: Because the commission has decided to include acknowledgement of the utility's resource acquisition strategy in its Chapter 22 rules, the commission will add a modified definition of acknowledgment to the rule as section (1) of this rule. All subsequent sections of the rule will be renumbered accordingly.

COMMENT #15: New Definition of Substantive Concern. DNR would also add a definition of "substantive concern" as part of its proposal to authorize commission acknowledgment.

RESPONSE: The commission will not add DNR's proposed definition because it is essentially identical to the revised definition of "concern" now contained in the rule. Inclusion of an additional definition that mirrors an existing definition would only create confusion.

4 CSR 240-22.020 Definitions

(1) Acknowledgment is an action the commission may take with respect to the officially adopted resource acquisition strategy or any element of the resource acquisition strategy including the preferred resource plan. Acknowledgement means that the commission finds the preferred resource plan, resource acquisition strategy, or the specified element of the resource acquisition strategy to be reasonable at a specific date, typically the date of the filing of the utility's Chapter 22 compliance filing or the date that acknowledgment is given. Acknowledgment may be given in whole, in part, or not at all. Acknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects.

(2) Annual update filing means the annual update report prepared by the utility in advance of the annual update workshop and the summary report prepared by the utility following the workshop as referenced in 4 CSR 240-22.080(3).

(3) Candidate resource options are the potential demand-side resource options pursuant to 4 CSR 240-22.050(6) and the potential supply-side resource options pursuant to 4 CSR 240-22.040(4) that advance to be included in one (1) or more alternative resource plans.

(4) Capacity means the maximum capability to continuously produce and deliver electric power via supply-side resources or the avoidance of the need for this capability by demand-side resources.

(5) Coincident demand means the hourly demand of a component of system load at the hour of system peak demand within a specified interval of time.

(6) Concern means concerns with the electric utility's compliance with the provisions of this chapter, any major concerns with the methodologies or analyses required to be performed by this chapter, and anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

(7) Contingency resource plan means an alternative resource plan designed to enhance the utility's ability to respond quickly and appropriately to events or circumstances that would render the preferred resource plan obsolete.

(8) Critical uncertain factor is any uncertain factor that is likely to materially affect the outcome of the resource planning decision.

(9) Deficiency means deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

(10) Demand means the rate of electric power use measured in kilowatts (kW).

(11) Demand-side program means an organized process for packaging and delivering to a particular market segment a portfolio of end-use measures that is broad enough to include at least some measures that are appropriate for most members of the target market segment.

(12) Demand-side rate means a rate structure for retail electric service designed to reduce the net consumption or modify the time of consumption of a customer rate class.

(13) Demand-side resource is a demand-side program or a demand-side rate conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter. A load-building program or rate is not a demand-side resource.

(14) Describe and document refers to the demonstration of compliance with each provision of this chapter. Describe means the provision of information in the technical volume(s) of the triennial compliance filing, in sufficient detail to inform the stakeholders how the utility complied with each applicable requirement of Chapter 22, why that approach was chosen, and the results of its approach. The description in the technical volume(s), including narrative text, graphs, tables, and other pertinent information, shall be written in a manner that would allow a stakeholder to thoroughly assess the utility's resource acquisition strategy and each of its components. Document means the provision of all of the supporting information relating to the filed resource acquisition strategy pursuant to 4 CSR 240-22.080(11).

(15) Distributed generation means a grid-connected electric generation system that is sized based on local load requirements and distributed primarily to the local load.

(16) Electric utility or utility means any electrical corporation as defined in section 386.020, RSMo, which is subject to the jurisdiction of the commission.

(17) End-use energy service or energy service means the specific need that is served by the final use of energy, such as lighting, cooking, space heating, air conditioning, refrigeration, water heating, or motive power.

(18) End-use measure means an energy-efficiency measure or an energy-management measure.

(19) Energy means the total amount of electric power that is generated or used over a specified interval of time measured in kilowatt-hours (kWh).

(20) Energy-efficiency measure means any device, technology, or operating procedure that makes it possible to deliver an adequate level and quality of end-use energy service while using less energy than would otherwise be required.

(21) Energy-management measure means any device, technology, or operating procedure that makes it possible to alter the time pattern of electricity usage so as to require less generating capacity or to allow the electric power to be supplied from more fuel-efficient generating units. Energy-management measures are sometimes referred to as demand-response measures.

(22) Expected cost of an alternative resource plan is the statistical expectation of the cost of implementing that plan, contingent upon the uncertain factors and associated probabilities. The utility shall consider probable environmental costs as well as direct utility costs in its assessment of alternative resource plans.

(23) Expected unserved hours means the statistical expectation of the number of hours per year that a utility will be unable to supply its native load without importing emergency power.

(24) Historical period shall be the ten (10) most recent years or the period of time used as the basis of the utility's forecast, whichever is longer.

(25) Implementation period means the time interval between the triennial compliance filings required of each utility pursuant to 4 CSR 240-22.080.

(26) Implementation plan means descriptions and schedules for the major tasks necessary to implement the preferred resource plan over the implementation period.

(27) Information means any fact, relationship, insight, estimate, or expert judgment that narrows the range of uncertainty surrounding key decision variables or has the potential to substantially influence or alter resource-planning decisions.

(28) Legal mandates include applicable state and federal executive orders, legislation, court decisions, and applicable state and federal administrative agency orders, rules, and regulations affecting electric utility cost recovery mechanisms, loads, resources, or resource plans.

(29) Levelized cost means the dollar amount of a fixed annual payment for which a stream of those payments over a specified period of time is equal to a specified present value based on a specified rate of interest.

(30) Life-cycle cost means the present worth of costs over the lifetime of any device or means for delivering end-use energy service.

(31) Load-building program means an organized promotional effort by the utility to persuade energy-related decision-makers to choose electricity instead of other forms of energy for the provision of energy service or to persuade existing customers to increase their use of electricity, either by substituting electricity for other forms of energy or by increasing the level or variety of energy services used. This term is not intended to include the provision of technical or engineering assistance, information about filed rates and tariffs, or other forms of routine customer service.

(32) Load impact means the change in energy usage and the change in diversified demand during a specified interval of time due to the implementation of a demand-side resource.

(33) Load profile means a plot of hourly demand versus chronological hour of the day from the hour ending 1:00 a.m. to the hour ending 12:00 midnight.

(34) Load-research data means major class level average hourly demands (kWhs per hour) derived from the metered instantaneous demand for each customer in the load-research sample.

(35) Long run means an analytical framework within which all factors of production are variable.

(36) Lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed end-use measures, multiplied by the fixed-cost margin of the appropriate rate component.

(37) Major class is a cost-of-service class of the utility.

(38) Market imperfection means any factor or situation that contributes to inefficient energy-related choices by decision-makers, including at least:

(A) Inadequate information about costs, performance, and benefits of end-use measures;

(B) Inadequate marketing infrastructure or delivery channels for end-use measures;

(C) Inadequate financing options for end-use measures;

(D) Mismatched economic incentives resulting from situations where the person who pays the initial cost of an efficiency investment is different from the person who pays the operating costs associated with the chosen efficiency level;

(E) Ineffective economic incentives when decision-makers give low priority to energy-related choices because they have a short-term ownership perspective or because energy costs are a relatively small share of the total cost structure (for businesses) or of the total budget (for households); or

(F) Inefficient pricing of energy supplies.

(39) Market segment means any subgroup of utility customers (or other energy-related decision-makers) which has some or all of the following characteristics in common: they have a similar mix of end-use energy service needs, they are subject to a similar array of market imperfections that tend to inhibit efficient energy-related choices, they have similar values and priorities concerning energy-related choices, or the utility has access to them through similar channels or modes of communication.

(40) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total program costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and are not typically observed.

(41) Nominal dollars means future or then-current dollar values that are not adjusted to remove the effects of anticipated inflation.

(42) Participant means an energy-related decision-maker who implements one (1) or more end-use measures as a direct result of a demand-side program.

(43) Planning horizon means a future time period of at least twenty (20) years' duration over which the costs and benefits of alternative resource plans are evaluated.

(44) Plot means a graphical representation to present data. Each plot shall be labeled as a stand-alone figure, whose axes shall be labeled with units. The data presented in each plot also shall be provided in tabular form in the technical volumes and in workpapers. Data tables will be labeled, including the identification of the corresponding plot. The plots and data tables shall be numbered, referenced, and explained in the text of the technical volumes and in workpapers.

(45) Potential resource options are all of the resources in the comprehensive set of demand-side resources that shall be considered pursuant to 4 CSR 240-22.050(1) and in the comprehensive set of supply-side resources that shall be considered pursuant to 4 CSR 240-22.040(1).

(46) Preferred resource plan means the resource plan that is contained in the resource acquisition strategy that has most recently been adopted by the utility decision-maker(s) for implementation by the electric utility.

(47) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

(48) Public counsel means the public counsel of the state of Missouri or their designated representative.

(49) Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential.

(50) Renewable energy means electricity generated from a source that is classified as a renewable energy source under a state or federal renewable energy standard to which the utility is subject.

(51) Resource acquisition strategy means a preferred resource plan, an implementation plan, a set of contingency resource plans, and the events or circumstances that would result in the utility moving to each contingency resource plan. It includes the type, estimated size, and timing of resources that the utility plans to achieve in its preferred resource plan.

(52) Resource plan means a particular combination of demand-side and supply-side resources to be acquired according to a specified schedule over the planning horizon.

(53) Resource planning means the process by which an electric utility evaluates and chooses the appropriate mix and schedule of supply-side, demand-side, and distribution and transmission resource additions and retirements to provide the public with an adequate level, quality, and variety of end-use energy services.

(54) RTO/ISO means Regional Transmission Organization or independent transmission system operator as defined in the Federal Energy Regulatory Commission (FERC) Order 200 and subsequent FERC orders.

(55) Special contemporary issues means a written list of issues contained in a commission order with input from staff, public counsel, and intervenors that are evolving new issues, which may not otherwise have been addressed by the utility or are continuations of unresolved issues from the preceding triennial compliance filing or annual update filing. Each utility shall evaluate and incorporate special contemporary issues in its next triennial compliance filing or annual update filing.

(56) Stakeholder group means—

(A) Staff, public counsel, and any person or entity granted intervention in a prior Chapter 22 proceeding of the electric utility. Such persons or entities shall be a party to any subsequent related Chapter 22 proceeding of the electric utility without the necessity of applying to the commission for intervention; and

(B) Any person or entity granted intervention in a current Chapter 22 proceeding of the electric utility.

(57) Subjective probability means the judgmental likelihood that the outcome will actually occur.

(58) Supply-side resource or supply resource means any device or method by which the electric utility can provide to its customers an adequate level and quality of electric power supply.

(59) Technical potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from a theoretical construct that assumes all feasible measures are adopted by customers of the utility regardless of cost or customer preference.

(60) Total resource cost test is a test of the cost-effectiveness of demand-side programs or demand-side rates that compares the sum of avoided utility costs plus avoided probable environmental costs to the sum of all incremental costs related to the end-use measures that are implemented due to the program or related to the rates (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources.

(61) Uncertain factor means any event, circumstance, situation, relationship, causal linkage, price, cost, value, response, or other relevant quantity which can materially affect the outcome of resource planning decisions, about which utility planners and decision-makers have incomplete or inadequate information at the time a decision must be made.

(62) Utility costs are the costs of operating the utility system and developing and implementing a resource plan that are incurred and paid by the utility. On an annual basis, utility cost is synonymous with utility revenue requirement.

(63) The utility cost test is a test of the cost-effectiveness of demand-side programs or demand-side rates that compares the avoided utility costs to the sum of all utility incentive payments, plus utility costs to administer, deliver, and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources.

(64) Utility discount rate means the post-tax rate of return on net investment used to calculate the utility's annual revenue requirements.

(65) Weather measure means a function of daily temperature data that reflects the observed relationship between electric load and temperature.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1741–1746). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy

Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, has the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

This particular rule, the load analysis and load forecasting rule, is no longer prescriptive of the requirements regarding the methodology the utility must use in its load analysis and forecasting. However, it is more prescriptive regarding the information the utility must provide in its compliance filing.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 392.1075, RSMo, (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.
RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.
RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.
RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge

that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not preapproval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.030(1)(B). Staff indicates the word "data" was inadvertently left out of this subsection. Public counsel supports this change.
RESPONSE AND EXPLANATION OF CHANGE: The commission will incorporate the correction proposed by staff.

4 CSR 240-22.030 Load Analysis and Load Forecasting

(1) Selecting Load Analysis Methods. The utility may choose multiple methods of load analysis if it deems doing so is necessary to achieve all of the purposes of load analysis and if the methods are consistent with, and calibrated to, one another. The utility shall describe and document its intended purposes for load analysis methods, why the selected load analysis methods best fulfill those purposes, and how the load analysis methods are consistent with one another and with the end-use consumption data used in the demand-side analysis as described in 4 CSR 240-22.050. At a minimum, the load analysis methods shall be selected to achieve the following purposes:

(B) To derive a data set of historical values from load research data that can be used as dependent and independent variables in the load forecasts;

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Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1746–1749). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The rule is also less prescriptive in some areas. For example, it no longer lists the attributes of supply-side options that the utility must consider. It is more prescriptive in other areas; for example, with regard to supply-side option's interconnection agreements. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred

resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires a screening of supply-side resources that are further evaluated, along with demand-side resources, through an integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition of "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: The Role of Regional Transmission Organizations (RTOs) in Transmission Planning for Supply-Side Analysis. KCPL raises a general concern that the rule fails to recognize the important role regional transmission organizations play in transmission planning for the electric utilities. KCPL is concerned that it is not feasible to conduct a fully integrated supply-side analysis without recognizing that transmission to secure delivery of the electricity can only be developed with the cooperation of the RTOs. KCPL suggests that the commission modify the rule to better recognize the role of the RTOs.

RESPONSE: The commission recognizes that regional transmission organizations play an important part in transmission planning for the electric utilities. However, the commission also recognizes that the utilities themselves also play an important role in determining transmission planning for their utility. The commission does not believe that this rule requires the utility to take each of the supply-side options to its RTO to get a detailed estimate of the transmission necessary for each option. However, the commission does expect the utility to have the experience and expertise to be able to provide a reasonable estimate for each option as required by the rule. The commission will not make any changes to the rule based on this comment.

COMMENT #7: Changes to Sections 4 CSR 240-22.040(1) and (4). The Department of Natural Resources asks the commission to modify these two (2) sections to explicitly require electric utilities to include retirement of existing generating plants and other supply-side resources as potential supply-side resource options and supply-side candidate resource options as part of their supply-side analysis.

RESPONSE: The commission cannot see how retiring an existing

supply-side resource is a resource option. However, the commission expects the utilities to include analysis of retiring existing supply-side resources as an integral part of electric utility resource planning. In addition, the rule requires screening of all supply-side options. There is no need to change the rule in the manner requested by DNR.

COMMENT #8: Changes to Subsection 4 CSR 240-22.040(2)(A). Dogwood suggests this subsection be modified to ensure that cost rankings of potential supply-side options take into account the additional costs that will be incurred to assure reliable integration of intermittent or uncontrollable supply sources, such as solar and wind power. Dogwood claims that if such costs are disregarded, the utility's analysis will be incomplete. To correct this problem, Dogwood asks the commission to add an additional sentence to the end of this subsection.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood's suggestion and will modify this subsection accordingly.

COMMENT #9: Changes to Subsection 4 CSR 240-22.040(3)(A). Dogwood is concerned that the commission has inadvertently limited the scope of the analysis required by this subsection by including a specific list of six (6) supply-side options. Dogwood suggests the commission remove the specific list and instead include a more general requirement that the utility "provide an adequate foundation of basic information for decisions about supply-side resource alternatives."
RESPONSE AND EXPLANATION OF CHANGE: The commission believes the specific list of six (6) supply-side options should remain in the rule. However, it agrees that the utility's analysis should not be limited to those six (6) options. To correct the problem, the commission will retain the list but will add language to the end of subsection (3)(A) of this rule to clarify that the list is not exhaustive.

COMMENT #10: Changes to Section 4 CSR 240-22.040(5). The Department of Natural Resources urges the commission to modify this section to establish more specific criteria by which the electric utility is to forecast critical uncertain factors that affect forecasted values and probabilities.
RESPONSE: The commission does not believe the added prescriptiveness proposed by DNR is necessary and will not modify the section.

4 CSR 240-22.040 Supply-Side Resource Analysis

(2) The utility shall describe and document its analysis of each potential supply-side resource option referred to in section (1). The utility may conduct a preliminary screening analysis to determine a short list of preliminary supply-side candidate resource options, or it may consider all of the potential supply-side resource options to be preliminary supply-side candidate resource options pursuant to subsection (2)(C). All costs shall be expressed in nominal dollars.

(A) Cost rankings of each potential supply-side resource option shall be based on estimates of the installed capital costs plus fixed and variable operation and maintenance costs levelized over the useful life of the potential supply-side resource option using the utility discount rate. The utility shall include the costs of ancillary and/or back-up sources of supply required to achieve necessary reliability levels in connection with intermittent and/or uncontrollable sources of generation (i.e., wind and solar).

(3) The utility shall describe and document its analysis of the interconnection and any other transmission requirements associated with the preliminary supply-side candidate resource options identified in subsection (2)(C).

(A) The analysis shall include the identification of transmission constraints, as estimated pursuant to 4 CSR 240-22.045(3), whether within the Regional Transmission Organization's (RTO's) footprint, on an interconnected RTO, or a transmission system that is not part of an RTO. The purpose of this analysis shall be to ensure that the transmission network is capable of reliably supporting the preliminary supply-side candidate resource options under consideration, that the costs of the transmission system investments associated with preliminary supply-side candidate resource options, as estimated pursuant to 4 CSR 240-22.045(3), are properly considered and to provide an adequate foundation of basic information for decisions to include, but not be limited to, the following:

1. Joint ownership or participation in generation construction projects;

2. Construction of wholly-owned generation facilities;

3. Participation in major refurbishment, life extension, upgrading, or retrofitting of existing generation facilities;

4. Improvements on its transmission and distribution system to increase efficiency and reduce power losses;

5. Acquisition of existing generating facilities; and

6. Opportunities for new long-term power purchases and sales, and short-term power purchases that may be required for bridging the gap between other supply options, both firm and nonfirm, that are likely to be available over all or part of the planning horizon.

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Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-22.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1749–1753). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the rule.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgement option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Comments of Commissioner Jeff Davis. Commissioner Jeff Davis filed written comments regarding this section of the Chapter 22 rules. Commissioner Davis explains that he originally questioned whether this new rule on transmission and distribution analysis planning was needed because it might duplicate at least some of the work going on at the Regional Transmission Organization (RTO) level. Commissioner Davis explains that he now believes the rule is necessary because events at the Southwest Power Pool (SPP), which is an RTO providing services to Empire and KCPL, have convinced him that the rule is needed to increase accountability for Missouri's electric utilities.

Davis suggests that the rule does not go far enough, and he urges the commission to expand the rule to include any transmission contemplated by any affiliate to the regulated utility, such as Union Electric's affiliate Ameren Transmission Company, as well as any projects the utility is considering assigning or "novating."

Davis also asks that the rule require the utility to provide a comprehensive list of all transmission projects the RTO is planning or considering in their respective service region or territory.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the concerns expressed by Commissioner Davis and will address those concerns along with similar concerns and suggestions by other stakeholders through the commission's responses to Comments #12, #15, #18, and #19 of this order of rulemaking.

COMMENT #7: Change to Section 4 CSR 240-22.045(1). Public counsel asks the commission to change a reference to "fundamental planning objectives" to the singular, "objective," reasoning that the rule only describes one (1) fundamental planning objective.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this section accordingly.

COMMENT #8: Change to Subsection 4 CSR 240-22.045(1)(A). At the hearing, Ameren Missouri proposed to insert language from section 4 CSR 240-22.040(7) of the current rule that makes it clear that the utility is not required to make a detailed line-by-line analysis of the transmission and distribution system. Ameren Missouri believes this change is necessary so the utilities can avoid doing more analysis than is necessary.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Ameren Missouri's comment and will modify this subsection accordingly.

COMMENT #9: Change to Subsection 4 CSR 240-22.045(1)(D). At the hearing, Ameren Missouri proposed a change to this subsection that would require the utility to consider improvements to the transmission and distribution networks that incorporate technologies that are "commercially available and field-tested at the time of filing."
RESPONSE: The commission will not modify this subsection as proposed by Ameren Missouri because to do so would create an inconsistent approach between this rule and the supply-side analysis rule, 4 CSR 240-22.050. Subsection 4 CSR 240-22.045(1)(D) requires that the utility assess transmission and distribution improvements that may become available during the planning horizon even though these improvements may not be commercially available and field-tested at the time of the filing.

COMMENT #10: KCPL's Comments Regarding the Proper Role of RTOs. KCPL is generally concerned that the proposed rule does not adequately recognize the magnitude of the role played by RTOs in the transmission planning process of an electric utility. KCPL asks the commission to modify several sections of the rule to better recognize the primary planning role of the RTO and the limitations on the ability of the utilities to plan for transmission. Specifically, KCPL asks the commission to modify subsections (1)(C), (1)(D), (3)(B), (3)(D), (4)(A), and (4)(C) and sections (3) and (4). KCPL did not offer any specific language to resolve its concern.
RESPONSE: None of the other electric utilities expressed a similar concern and KCPL provided no specific alternative language to address its concerns either in its written comments or during its comments offered at the public hearing. The commission does not believe that any modification is necessary and will make no change to the rule as a result of this comment.

COMMENT #11: Changes to Paragraph 4 CSR 240-22.045(3)(A)1. Public counsel asks the commission to add a reference to "congestion" as a factor that a utility must assess with regard to transmission upgrades.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.045(3)(A)4. Public counsel asks the commission to add language to this section to make it clear that utilities must also analyze transmission that will be built and owned by an affiliate of the utility. Staff proposed to achieve the same result by adding similar new language at section (5). Public counsel does not oppose staff's proposed language but believes its proposal is better.
RESPONSE AND EXPLANATION OF CHANGE: The commission will address staff's proposed new language at Comment #18 to this rule. The commission agrees with public counsel's proposed additional language for this paragraph and will incorporate that language, as modified by public counsel's witness at the hearing.

COMMENT #13: Changes to Paragraph 4 CSR 240-22.045(3)(A)6. Public counsel proposes a change in this subsection to recognize that an RTO generally does not build transmission itself, but instead approves transmission projects that are built by others. At the hearing, staff agreed to the change proposed by public counsel but suggested slightly modified language. Public counsel then agreed that staff's modified language was most appropriate. Public counsel also suggested that the word "primarily" be added before "economic reasons" to ensure that this provision does not apply solely to upgrades where one hundred percent (100%) of the benefits are considered to be economic benefits.
RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the modified language proposed by public counsel and staff.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.045(3)(B)2. Public counsel proposes to modify this paragraph to make it clear that Missouri utilities are to review RTO expansion plans to assess whether those plans are in the interests of the utility's "Missouri" customers.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this paragraph accordingly.

COMMENT #15: Changes to Paragraphs 4 CSR 240-22.045(3)(B)3., 4., and 5. Public counsel proposes to add additional language to ensure that necessary analysis is performed to assess the impact on planning objectives of transmission built and owned by an affiliate of the utility.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this subsection accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.045(3)(D)5. This subsection requires the planning utility to estimate the estimated total cost of each transmission upgrade and "estimated congestion costs." KCPL argues that it would be very difficult for a utility to estimate congestion costs and to do so would entail substantial cost and produce minimal value in the Integrated Resource Planning (IRP) process. For that reason, KCPL asks the commission to remove the requirement to estimate congestion costs from the paragraph.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the proposed change, but for a different reason. The subsection refers to transmission projects "needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network," instead of economic projects, where congestion cost analysis would be more valuable. For that reason, the commission will remove the requirement to estimate congestion costs from the paragraph.

COMMENT #17: Changes to Subsection 4 CSR 240-22.045(4)(C). Public counsel proposes changes to this subsection that would ensure that incremental benefits were calculated by comparing the benefits of one (1) approach to the benefits of another approach.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #18: New Section 4 CSR 240-22.045(5). Staff proposed to add a new section to require the utility to describe the transmission plans of affiliated transmission companies, as well as other transmission company projects that impact or that may be impacted by the electric utility.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

COMMENT #19: New Section 4 CSR 240-22.045(6). Staff proposes to add a new section that will require the utility to identify and describe any transmission projects under consideration by an RTO for the utility's service territory.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

4 CSR 240-22.045 Transmission and Distribution Analysis

(1) The electric utility shall describe and document its consideration of the adequacy of the transmission and distribution networks in fulfilling the fundamental planning objective set out in 4 CSR 240-22.010. Each utility shall consider, at a minimum, improvements to the transmission and distribution networks that—

(A) Reduce transmission power and energy losses. Opportunities to reduce transmission network losses are among the supply-side resources evaluated pursuant to 4 CSR 240-22.040(3). The utility shall assess the age, condition, and efficiency level of existing transmission and distribution facilities and shall analyze the feasibility and cost effectiveness of transmission and distribution network loss-reduction measures This provision shall not be construed to require a detailed line-by-line analysis of the transmission and distribution systems, but is intended to require the utility to identify and analyze opportunities for efficiency improvements in a manner that is consistent with the analysis of other supply-side resource options;

(3) Transmission Analysis. The utility shall compile information and perform analyses of the transmission networks pertinent to the selection of a resource acquisition strategy. The utility and the Regional Transmission Organization (RTO) to which it belongs both participate in the process for planning transmission upgrades.

(A) The utility shall provide, and describe and document, its—

1. Assessment of the cost and timing of transmission upgrades to reduce congestion and/or losses, to interconnect generation, to facilitate power purchases and sales, and to otherwise maintain a viable transmission network;

2. Assessment of transmission upgrades to incorporate advanced technologies;

3. Estimate of avoided transmission costs;

4. Estimate of the portion and amount of costs of proposed regional transmission upgrades that would be allocated to the utility, and if such costs may differ due to plans for the construction of facilities by an affiliate of the utility instead of the utility itself, then an estimate, by upgrade, of this cost difference;

5. Estimate of any revenue credits the utility will receive in the future for previously built or planned regional transmission upgrades; and

6. Estimate of the timing of needed transmission and distribution resources and any transmission resources being planned by the RTO primarily for economic reasons that may impact the alternative resource plans of the utility.

(B) The utility may use the RTO transmission expansion plan in its consideration of the factors set out in subsection (3)(A) if all of the following conditions are satisfied:

1. The utility actively participates in the development of the RTO transmission plan;

2. The utility reviews the RTO transmission overall expansion plans each year to assess whether the RTO transmission expansion plans, in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

3. The utility reviews the portion of RTO transmission expansion plans each year within its service territory to assess whether the RTO transmission expansion plans pertaining to projects that are partially- or fully-driven by economic considerations (i.e., projects that are not solely or primarily based on reliability considerations), in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

4. The utility documents and describes its review and assessment of the RTO overall and utility-specific transmission expansion plans; and

5. If any affiliate of the utility intends to build transmission within the utility's service territory where the project(s) are partially- or fully-driven by economic considerations, then the utility shall explain why such affiliate-built transmission is in the best interest of the utility's Missouri customers and describe and document the analysis performed by the utility to determine whether such affiliate-built transmission is in the interest of the utility's Missouri customers.

(D) The utility shall provide a report for consideration in 4 CSR 240-22.040(3) that identifies the physical transmission upgrades needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network, including:

1. A list of the transmission upgrades needed to physically interconnect a generation source within the RTO footprint;

2. A list of the transmission upgrades needed to enhance deliverability from a point of delivery within the RTO including requirements for firm transmission service from the point of delivery to the utility's load and requirements for financial transmission rights from a point of delivery within the RTO to the utility's load;

3. A list of transmission upgrades needed to physically interconnect a generation source located outside the RTO footprint;

4. A list of the transmission upgrades needed to enhance deliverability from a generator located outside the RTO including requirements for firm transmission service to a point of delivery within the RTO footprint and requirements for financial transmission rights to a point of delivery within the RTO footprint;

5. The estimated total cost of each transmission upgrade; and

6. The estimated fraction of the total cost and amount of each transmission upgrade allocated to the utility.

(4) Analysis Required for Transmission and Distribution Network Investments to Incorporate Advanced Technologies.

(C) The utility shall describe and document its optimization of investment in advanced transmission and distribution technologies based on an analysis of—

1. Total costs and benefits, including:

A. Costs of the advanced grid investments;

B. Costs of the non-advanced grid investments;

C. Reduced resource costs through enhanced demand response resources and enhanced integration of customer-owned generation resources; and

D. Reduced supply-side production costs;

2. Cost effectiveness, including:

A. The monetary values of all incremental costs of the energy resources and delivery system based on advanced grid technologies relative to the costs of the energy resources and delivery system based on non-advanced grid technologies;

B. The monetary values of all incremental benefits of the energy resources and delivery system based on advanced grid technologies relative to the costs and benefits of the energy resources and delivery system based on non-advanced grid technologies; and

C. Additional non-monetary factors considered by the utility;

3. Societal benefit, including:

A. More consumer power choices;

B. Improved utilization of existing resources;

C. Opportunity to reduce cost in response to price signals;

D. Opportunity to reduce environmental impact in response to environmental signals;

4. Any other factors identified by the utility; and

5. Any other factors identified in the special contemporary issues process pursuant to 4 CSR 240-22.080(4) or the stakeholder group process pursuant to 4 CSR 240-22.080(5).

(5) The electric utility shall identify and describe any affiliate or other relationship with transmission planning, designing, engineering, building, and/or construction management companies that impact or may be impacted by the electric utility. Any description and documentation requirements in sections (1) through (4) also apply to any affiliate transmission planning, designing, engineering, building, and/or construction management company or other transmission planning, designing, engineering, building, and/or construction management company currently participating in transmission works or transmission projects for and/or with the electric utility.

(6) The electric utility shall identify and describe any transmission projects under consideration by an RTO for the electric utility's service territory.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1753–1761). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed amendment was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it."

Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

This rule is much less prescriptive than the previous rule. The utility is allowed to determine the approach it will take to develop demand-side programs for screening. It does not require that demand-side programs be developed for a wide spectrum of customers and end-uses. It also removes the detailed description of how the utility should calculate avoided costs. It does prescribe what costs should be taken into account and requires that the utility carefully document its processes and results.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to use the total resource cost test to screen demand-side resources. All resources, that have passed the screening, (both supply-side and demand-side), are further evaluated through integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers. Demand-side programs that survive this rigorous screening should be the programs for which the utility requests the commission's approval for non-traditional rate-making treatment.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.
RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.
RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.
RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.050(1). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the Integrated Resource Planning (IRP) process.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section 3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #7: Changes to Subsection 4 CSR 240-22.050(1)(B). The Department of Natural Resources asks the commission to "establish a yardstick" at the integration phase that encourages utility diligence in efforts to identify measures for screening of all major end uses and to formulate aggressive implementation strategies.
RESPONSE: The commission does not agree that the "yardstick" suggested by DNR should be established in 4 CSR 240-22.060(3)(A)3. (see Comment #12 for Order of Rulemaking for 4 CSR 240-22.060) and, therefore, will not modify this subsection of this rule.

COMMENT #8: Changes to Paragraph 4 CSR 240-22.050(1)(A)4. Renew Missouri contends this subsection is inconsistent with the MEEIA definitions of "demand-side program" that reduces "net consumption of electricity" and "energy efficiency," which means "measures that reduce the amount of electricity required to achieve a given end use." Renew Missouri suggests the paragraph be deleted for that reason.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Renew Missouri and will delete this paragraph.

COMMENT #9: Maximum Achievable Potential Substituted for Technical Potential. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential at several points in this rule. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. In its comments, staff expressed support for adding a definition for maximum achievable potential to the rule, but does not support deleting the term technical potential entirely from the rule.
RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential entirely from the rule. The commission will add a definition of maximum achievable potential that matches the definition of that term from its MEEIA rules. That new definition has been added as 4 CSR 240-22.020(40). The commission will also add maximum achievable potential to the purpose statement and section (2) of this rule and will substitute "maximum achievable potential" for "technical potential" in subparagraphs (3)(G)5.B. and (4)(D)5.A. of this rule.

COMMENT #10: Addition of "Customer" Classes. Public counsel asks the commission to add the word "customer" before "class or classes" at several points in the rule to improve clarity.
RESPONSE: The commission will not modify its rule as suggested by public counsel because each of the places public counsel would add the word "customer" is between the words "major class" and major class is defined in the rule as a cost-of-service class of the utility. Thus the modification is unnecessary.

COMMENT #11: Changes to Subsection 4 CSR 240-22.050(3)(E). Public counsel asks the commission to add the term "such as rebates, financing, and direct installations" as examples of the types of multiple approaches referenced in the subsection.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel that providing these examples adds clarity to the subsection and will modify the subsection accordingly.

COMMENT #12: Changes to Subsection 4 CSR 240-22.050(3)(F). Public counsel asks the commission to add the term "describe and document the feasibility, cost–reduction potential and potential benefits of" to provide guidance on the type of analysis needed in this area.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subsection accordingly.

COMMENT #13: Changes to Subparagraph 4 CSR 240-22.050(3)(G)5.B. Public counsel asks the commission to add the concept of financing cost to this subsection to ensure that the costs associated with using financing to encourage customer participation in demand-side programs are included in the utility's calculation of the cost of incentives.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subparagraph accordingly.

COMMENT #14: Changes to Subsection 4 CSR 240-22.050(4)(F). Public counsel asks the commission to add language to this subsection to add guidance on the manner in which demand-side rates are considered by the utility's Regional Transmission Organization (RTO).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion except for the words "and any other considerations." Those words are unnecessary because section (4) requires the utility to describe and document its demand-side rate planning and design process and to, at the least, include specific activities and elements. Thus, the rule sets out the minimum standard; other considerations may be taken into account.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.050(5)(A)2. Public counsel would add the word "other" to this subsection to reflect the fact that fuel costs and emission allowance costs are within the broad category of costs referred to as "variable operating and maintenance costs."
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will make the suggested change.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.050(5)(B)4. The Department of Natural Resources would add language to this subsection to clarify that costs identified in this subsection are to be counted only to the extent they are intended to recover incremental costs other than lost revenues or utility incentive payments to customers.

Public counsel would address the same concern by moving this paragraph to .050(5)(C) as a new paragraph 3. because the costs of incentive payments to ratepayers by the utility are not a net increase in the cost to society so they should be included in the utility cost test described in subsection (5)(C).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and public counsel. Public counsel's suggestion to delete paragraph .050(5)(B)4. and move it to a new paragraph (5)(C)3. will best deal with the concern and the commission will do so.

COMMENT #17: Changes to Section 4 CSR 240-22.050(6). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the IRP process.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section

3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #18: Changes to Paragraphs 4 CSR 240-22.050(6)(C)1. and 2. Public counsel would add the term "achievable potential to each demand-side candidate resource option or portfolio and the likelihood of occurrence for the different customer participation levels" to both paragraphs to make it clear that both the range of possible outcomes plus the likelihood of outcomes at different points in the range is necessary to estimate "the impact of uncertainty."
RESPONSE AND EXPLANATION OF CHANGE: The commission does not believe the clarifying edits provided by public counsel on these paragraphs are necessary and will not modify the paragraphs to add the suggested language. However, the commission will modify paragraph (6)(C)1. to delete the word "technical" and substitute the words "maximum achievable" to increase the usefulness of the information derived from the subsection during the electric utility resource planning process.

COMMENT #19: Changes to Subsection 4 CSR 240-22.050(6)(C)2. Staff advises the commission to change the term "demand-side" to "end-use" measures to be consistent with usage in other parts of the rule. Public counsel supports that change.
RESPONSE AND EXPLANATION OF CHANGE: The commission will make the change proposed by staff.

COMMENT #20: Additional Edits Proposed by Public Counsel. As part of its comments, public counsel submitted a red-line version of the proposed rule that incorporated several proposed changes to the rule. Public counsel specifically commented on most of those changes, but also included a few edits that were not otherwise explained in its comments.
RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed these additional edits and found them to be appropriate. The commission has incorporated those edits in section (2), subsections (1)(B) and (4)(D), and subparagraph (4)(D)5.A.

4 CSR 240-22.050 Demand-Side Resource Analysis

PURPOSE: This rule specifies the principles by which potential demand-side resource options shall be developed and analyzed for cost-effectiveness, with the goal of achieving all cost-effective demand-side savings. It also requires the selection of demand-side candidate resource options that are passed on to integrated resource analysis in 4 CSR 240-22.060 and an assessment of their maximum achievable potentials, technical potentials, and realistic achievable potentials.

(1) The utility shall identify a set of potential demand-side resources from which demand-side candidate resource options will be identified for the purposes of developing the alternative resource plans required by 4 CSR 240-22.060(3). A potential demand-side resource consists of a demand-side program designed to deliver one (1) or more energy efficiency and energy management measures or a demand-side rate. The utility shall select the set of potential demand-side resources and describe and document its selection—

(A) To provide broad coverage of—

1. Appropriate market segments within each major class;

2. All significant decision-makers, including at least those who choose building design features and thermal integrity levels, equipment and appliance efficiency levels, and utilization levels of the energy-using capital stock; and

3. All major end uses, including at least the end uses which are to be considered in the utility's load analysis as listed in 4 CSR 240-22.030(4)(A)1.;

(B) To fulfill the goal of achieving all cost-effective demand-side savings, the utility shall design highly effective potential demand-side programs consistent with subsection (1)(A) that broadly cover the full spectrum of cost-effective end-use measures for all customer market segments;

(2) The utility shall conduct, describe, and document market research studies, customer surveys, pilot demand-side programs, pilot demand-side rates, test marketing programs, and other activities as necessary to estimate the maximum achievable potential, technical potential, and realistic achievable potential of potential demand-side resource options for the utility and to develop the information necessary to design and implement cost-effective demand-side programs and demand-side rates. These research activities shall be designed to provide a solid foundation of information applicable to the utility about how and by whom energy-related decisions are made and about the most appropriate and cost-effective methods of influencing these decisions in favor of greater long-run energy efficiency and energy management impacts. The utility may compile existing data or adopt data developed by other entities, including government agencies and other utilities, as long as the utility verifies the applicability of the adopted data to its service territory. The utility shall provide copies of completed market research studies, pilot programs, pilot rates, test marketing programs, and other studies as required by this rule and descriptions of those studies that are planned or in progress and the scheduled completion dates.

(3) The utility shall develop potential demand-side programs that are designed to deliver an appropriate selection of end-use measures to each market segment. The utility shall describe and document its potential demand-side program planning and design process which shall include at least the following activities and elements:

(E) Design a marketing plan and delivery process to present the menu of end-use measures to the members of each market segment and to persuade decision-makers to implement as many of these measures as may be appropriate to their situation. When appropriate, consider multiple approaches such as rebates, financing, and direct installations for the same menu of end-use measures;

(F) Evaluate, describe, and document the feasibility, cost-reduction potential, and potential benefits of statewide marketing and outreach programs, joint programs with natural gas utilities, upstream market transformation programs, and other activities. In the event that statewide marketing and outreach programs are preferred, the utilities shall develop joint programs in consultation with the stakeholder group;

(G) Estimate the characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side program, including:

1. An assessment of the demand and energy reduction impacts of each stand-alone end-use measure contained in each potential demand-side program;

2. An assessment of how the interactions between end-use measures, when bundled with other end-use measures in the potential demand-side program, would affect the stand-alone end-use measure impact estimates;

3. An estimate of the incremental and cumulative number of program participants and end-use measure installations due to the potential demand-side program;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side program; and

5. For each year of the planning horizon, an estimate of the costs, including:

A. The incremental cost of each stand-alone end-use measure;

B. The cost of incentives paid by the utility to customers or

utility financing to encourage participation in the potential demand-side program. The utility shall consider multiple levels of incentives paid by the utility for each end-use measure within a potential demand-side program, with corresponding adjustments to the maximum achievable potential and the realistic achievable potential of that potential demand-side program;

C. The cost of incentives to customers to participate in the potential demand-side program paid by the entities other than the utility;

D. The cost to the customer and to the utility of technology to implement a potential demand–side program;

E. The utility's cost to administer the potential demand-side program; and

F. Other costs identified by the utility;

(4) The utility shall develop potential demand-side rates designed for each market segment to reduce the net consumption of electricity or modify the timing of its use. The utility shall describe and document its demand-side rate planning and design process and shall include at least the following activities and elements:

(D) Estimate the input data and other characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side rate, including:

1. An assessment of the demand and energy reduction impacts of each potential demand-side rate;

2. An assessment of how the interactions between multiple potential demand-side rates, if offered simultaneously, would affect the impact estimates;

3. An assessment of how the interactions between potential demand-side rates and potential demand-side programs would affect the impact estimates of the potential demand-side programs and potential demand-side rates;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side rate; and

5. For each year of the planning horizon, an estimate of the costs of each potential demand-side rate, including:

A. The cost of incentives to customers to participate in the potential demand-side rate paid by the utility. The utility shall consider multiple levels of incentives to achieve customer participation in each potential demand-side rate, with corresponding adjustments to the maximum achievable potential and the realistic achievable potentials of that potential demand-side rate;

B. The cost to the customer and to the utility of technology to implement the potential demand-side rate;

C. The utility's cost to administer the potential demand-side rate; and

D. Other costs identified by the utility;

(F) Evaluate how each demand-side rate would be considered by the utility's Regional Transmission Organization (RTO) in resource adequacy determinations, eligibility to participate as a demand response resource in RTO markets for energy, capacity, and ancillary services; and

(5) The utility shall describe and document its evaluation of the cost effectiveness of each potential demand-side program developed pursuant to section (3) and each potential demand-side rate developed pursuant to section (4). All costs and benefits shall be expressed in nominal dollars.

(A) In each year of the planning horizon, the benefits of each potential demand-side program and each potential demand-side rate shall be calculated as the cumulative demand reduction multiplied by the avoided demand cost plus the cumulative energy savings multiplied by the avoided energy cost. These calculations shall be performed both with and without the avoided probable environmental costs. The utility shall describe and document the methods, data, and assumptions it used to develop the avoided costs.

1. The utility avoided demand cost shall include the capacity cost of generation, transmission, and distribution facilities, adjusted to reflect reliability reserve margins and capacity losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided demand cost, and the capacity cost chosen shall be consistent throughout the triennial compliance filing.

2. The utility avoided energy cost shall include the fuel costs, emission allowance costs, and other variable operation and maintenance costs of generation facilities, adjusted to reflect energy losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided energy cost, and the energy costs shall be consistent throughout the triennial compliance filing.

3. The avoided probable environmental costs include the effects of the probable environmental costs calculated pursuant to 4 CSR 240-22.040(2)(B) on the utility avoided demand cost and the utility avoided energy cost. The utility shall describe and document how it developed its avoided probable environmental cost.

(B) The total resource cost test shall be used to evaluate the cost effectiveness of the potential demand-side programs and potential demand-side rates. In each year of the planning horizon—

1. The costs of each potential demand-side program shall be calculated as the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions) plus utility costs to administer, deliver, and evaluate each potential demand-side program;

2. The costs of each potential demand-side rate shall be calculated as the sum of all incremental costs that are due to the rate (including both utility and participant contributions) plus utility costs to administer, deliver, and evaluate each potential demand-side rate; and

3. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues or utility incentive payments to customers.

(C) The utility cost test shall also be performed for purposes of comparison. In each year of the planning horizon—

1. The costs of each potential demand-side program and potential demand-side rate shall be calculated as the sum of all utility incentive payments plus utility costs to administer, deliver, and evaluate each potential demand-side program or potential demand-side rate;

2. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues; and

3. The costs shall include, but separately identify, the costs of any rate of return or incentive included in the utility's recovery of demand-side program costs.

(6) Potential demand-side programs and potential demand-side rates that pass the total resource cost test including probable environmental costs shall be considered as demand-side candidate resource options and must be included in at least one (1) alternative resource plan developed pursuant to 4 CSR 240-22.060(3).

(C) The utility shall describe and document its assessment of the potential uncertainty associated with the load impact estimates of the demand-side candidate resource options or portfolios. The utility shall estimate—

1. The impact of the uncertainty concerning the customer participation levels by estimating and comparing the maximum achievable potential and realistic achievable potential of each demand-side candidate resource option or portfolio; and

2. The impact of uncertainty concerning the cost effectiveness by identifying uncertain factors affecting which end-use resources are cost effective. The utility shall identify how the menu of cost-effective end-use measures changes with these uncertain factors and shall estimate how these changes affect the load impact estimates associated with the demand-side candidate resource options.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1761–1766). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to model both demand-side and supply-side resources and complete risk analysis on demand-side and supply-side resource implementation. If a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the commission to approve MEEIA demand-side programs will be met through the requirements of this rule. The utility will use the integration model of its most recent preferred plan to screen demand-side programs that are not part of the utility's preferred plan to show that it is cost-effective as one of the requirements to acquire commission approval of a demand-side program.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.060(2)(A). Public counsel suggested several wording changes to this subsection that it believes would clarify the meaning of the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will incorporate the suggested edits.

COMMENT #7: Question About Subsection 4 CSR 240-22.060(2)(B). KCPL indicates it is unsure of the intended meaning of this subsection's use of the term "levelized," indicating its understanding that the term means "a simple average and not discounted."

RESPONSE: The commission does not agree with KCPL that "levelized" means a simple average, because proposed 4 CSR 240-22.020(28) defines levelized costs to mean the dollar amount of a fixed annual payment for which a stream of those payments over a specified period of time is equal to a specified present value based on a specified rate of interest. Therefore, the commission will not modify this subsection.

COMMENT #8: Changes to Section 4 CSR 240-22.060(3). Public counsel suggests that the phrase "and variation in the timing or resource acquisition" be added to this section to stress the importance of the timing of acquisition in alternative resource plans to help determine an optimal plan. Public counsel proposes a similar change to subsection (3)(A) for the same reason.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and believes this change will require the utility to think outside the box when developing its list of alternative resource plans. The commission will change this section as public counsel suggests.

COMMENT #9: Changes to Paragraph 4 CSR 240-22.060(3)(A)1. This subsection requires a utility's resource plan to minimally comply with "legal mandates for demand-side resources, renewable energy resources, and other mandated energy resources." KCPL contends this paragraph is unnecessary as compliance with legal mandates is a given.

RESPONSE: The commission does not agree with KCPL because the purpose of this paragraph is to develop a "compliance benchmark resource plan for planning purposes." The commission will not change the paragraph.

COMMENT #10: Changes to Paragraphs 4 CSR 240-22.060(3)(A)2., 3., and 4. Public counsel proposes to add the phrase "an optimal combination of" renewable energy resources, demand-side resources, and other energy resources in the various paragraphs. Public counsel argues this change is necessary to stress the concept of optimization.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not add the phrase "an optimal combination of" in these paragraphs, because to do so would materially change the intent of these paragraphs from assessing the range of options to somehow predetermining the optimal combination of resources which cannot be known when formulating the alternative resource plan in section (3). However, in paragraph (3)(A)3., the commission will change "technical potential" to "maximum achievable potential" to assess a more meaningful range of demand-side resources.

COMMENT #11: Aggressive Renewable Energy Resource Plan Case in Paragraph 4 CSR 240-22.060(3)(A)2. The Department of Natural Resources asks the commission to remove the requirement that only renewable energy resources may be included in the resource plan, permit the utility to continue current commitments to demand-side resources, and require that baseload or intermediate energy requirements that result from load growth or resource retirements be met by renewable energy sources.

RESPONSE: The commission will not modify this paragraph as requested by DNR, because the utility's current commitment to demand-side resources is accounted for in the utility load forecasts per 4 CSR 240-22.050(7). Further, this paragraph as written is intended to assess the aggressive renewable resource plan for planning purposes.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.060(3)(A)3. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. The Department of Natural Resources proposes a more extensive rewrite of this paragraph to establish a yardstick by which utilities measure whether they have utilized sufficient demand-side resources to achieve all cost-effective demand-side savings consistent with 4 CSR 240-20.094(2), the MEEIA rules.

In its comments, staff expressed support for adding a definition of maximum achievable potential to the rule, but does not support deleting the term technical potential from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential from its rule, but will add the definition of maximum achievable potential taken from its MEEIA rules in 4 CSR 240-22.020. Defining the aggressive demand-side resource plan as the maximum achievable plan should also reduce DNR's perceived need to establish a "yardstick."

COMMENT #13: Addition of "Demand-Side" Rate. Public counsel asks the commission to add the word "demand-side" before "rate" at several points in the rule to improve clarity.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the rule as public counsel suggests.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.060(3)(A)6. Staff and public counsel ask the commission to change the word "staff" to "commission" to be consistent with 4 CSR 240-22.080(4) in recognition that it is the commission rather than staff that will be specifying a special contemporary issue.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and its staff and will modify the paragraph accordingly.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.060(3)(C)2. Public counsel suggests the commission add the words "and other retrofits" to the existing term "equipment" in describing additions to generation plants to meet environmental requirements.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will modify the paragraph accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.060(4)(B)3. Public counsel and KCPL both proposed changes to this paragraph to modify the subsections reference to measuring capacity "at the customer's meter." KCPL suggests that phrase be changed to "capacity supplied to the transmission grid." At the hearing, public counsel changed its recommended language to that proposed by KCPL.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #17: Changes to Paragraph 4 CSR 240-22.060(4)(B)6. KCPL proposes a change to this subsection that would replace the phrase "energy at the customer's meters" with the phrase "energy supplied to the transmission grid, less losses." KCPL explains this change is necessary because physical energy cannot be assigned to an individual customer or group of customers.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #18: Changes to Subsection 4 CSR 240-22.060(4)(C). Public counsel would add the phrase "for demand-side resources" to better describe the utility financial incentives that are to be analyzed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subsection as public counsel suggests.

COMMENT #19: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.B. Public counsel suggests the phrase "impact on retail rates" be changed to "percentage increase in the average rate from the prior years."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #20: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.C. Public counsel suggests the addition of the phrase "and credit metrics."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #21: Changes to Paragraph 4 CSR 240-22.060(4)(C)2. Public counsel would add a reference to legal mandates to be consistent with the change to the definition of legal mandates it proposed for section 4 CSR 240-22.020(27).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as public counsel suggests.

COMMENT #22: Changes to Sections 4 CSR 240-22.060(5), (6), and (7) Relating to Critical Uncertain Factors. Public counsel would make changes to these three (3) sections to help clarify the distinction between "uncertain factors" and "critical uncertain factors" so that the process of determining which "uncertain factors" are deemed to be "critical uncertain factors" is easier to follow.

RESPONSE: The commission does not believe public counsel's suggestions constitute a material change that would improve the rule. Furthermore, no other stakeholder suggested changing these sections. The commission will not make the changes suggested by public counsel.

COMMENT #23: New Section 4 CSR 240-22.060(8) Relating to Covariant Risk Analysis. Dogwood would add a new section that would require utilities to take into account the interrelationship between risk factors through a covariant risk analysis. At the hearing, staff supported the concept of covariant risk analysis, but suggested the same result could be obtained by inserting language into section (6) of this rule that would require the utility to describe its assessment of the impacts "and inter-relationship" of critical uncertain factors.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood's emphasis about covariant risk analysis. However, it agrees with staff that Dogwood's purpose can be accomplished by inserting language into section (6) of this rule and does not require the addition of a new section. The commission will modify section (6) of this rule as suggested by staff.

4 CSR 240-22.060 Integrated Resource Plan and Risk Analysis

(2) Specification of Performance Measures. The utility shall specify, describe, and document a set of quantitative measures for assessing the performance of alternative resource plans with respect to resource planning objectives.

(A) These performance measures shall include at least the following:

1. Present worth of utility revenue requirements, with and without any rate of return or financial performance incentives for demand-side resources the utility is planning to request;

2. Present worth of probable environmental costs;

3. Present worth of out-of-pocket costs to participants in demand-side programs and demand-side rates;

4. Levelized annual average rates;

5. Maximum single-year increase in annual average rates;

6. Financial ratios (e.g., pretax interest coverage, ratio of total debt to total capital, ratio of net cash flow to capital expenditures) or other credit metrics indicative of the utility's ability to finance alternative resource plans; and

7. Other measures that utility decision-makers believe are appropriate for assessing the performance of alternative resource plans relative to the planning objectives identified in 4 CSR 240-22.010(2).

(3) Development of Alternative Resource Plans. The utility shall use appropriate combinations of demand-side resources and supply-side resources to develop a set of alternative resource plans, each of which is designed to achieve one (1) or more of the planning objectives identified in 4 CSR 240-22.010(2). Demand-side resources are the demand-side candidate resource options and portfolios developed in 4 CSR 240-22.050(6). Supply-side resources are the supply-side candidate resource options developed in 4 CSR 240-22.040(4). The goal is to develop a set of alternative plans based on substantively different mixes of supply-side resources and demand-side resources and variations in the timing of resource acquisition to assess their relative performance under expected future conditions as well as their robustness under a broad range of future conditions.

(A) The utility shall develop, and describe and document, at least one (1) alternative resource plan, and as many as may be needed to assess the range of options for the choices and timing of resources, for each of the following cases. Each of the alternative resource plans for cases pursuant to paragraphs (3)(A)1.–(3)(A)5. shall provide resources to meet at least the projected load growth and resource retirements over the planning period in a manner specified by the case. The utility shall examine cases that—

1. Minimally comply with legal mandates for demand-side resources, renewable energy resources, and other mandated energy resources. This constitutes the compliance benchmark resource plan for planning purposes;

2. Utilize only renewable energy resources, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally-compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes;

3. Utilize only demand-side resources, up to the maximum achievable potential of demand-side resources in each year of the planning horizon, if that results in more demand-side resources than the minimally-compliant plan. This constitutes the aggressive demand-side resource plan for planning purposes;

4. In the event that legal mandates identify energy resources other than renewable energy or demand-side resources, utilize only the other energy resources, up to the maximum potential capability of the other energy resources in each year of the planning horizon, if that results in more of the other energy resources than the compliance benchmark resource plan. For planning purposes, this constitutes the aggressive legally-mandated other energy resource plan;

5. Optimally comply with legal mandates for demand-side resources, renewable energy resources, and other targeted energy resources. This constitutes the optimal compliance resource plan, where every legal mandate is at least minimally met, but some resources may be optimally utilized at levels greater than the mandated minimums;

6. Any other plan specified by the commission as a special contemporary issue pursuant to 4 CSR 240-22.080(4);

7. Any other plan specified by commission order; and

8. Any additional alternative resource plans that the utility deems should be analyzed.

(C) The utility shall include in its development of alternative resource plans the impact of—

1. The potential retirement or life extension of existing generation plants;

2. The addition of equipment and other retrofits on generation plants to meet environmental requirements; and

3. The conclusion of any currently-implemented demand-side resources.

(4) Analysis of Alternative Resource Plans. The utility shall describe and document its assessment of the relative performance of the alternative resource plans by calculating for each plan the value of each performance measure specified pursuant to section (2). This calculation shall assume values for uncertain factors that are judged by utility decision-makers to be most likely. The analysis shall cover a planning horizon of at least twenty (20) years and shall be carried out on a year-by-year basis in order to assess the annual and cumulative impacts of alternative resource plans. The analysis shall be based on the assumption that rates will be adjusted annually, in a manner that is consistent with Missouri law. The analysis shall treat supply-side and demand-side resources on a logically-consistent and economically-equivalent basis, such that the same types or categories of costs, benefits, and risks shall be considered and such that these factors shall be quantified at a similar level of detail and precision for all resource types. The utility shall provide the following information:

(B) For each alternative resource plan, a plot of each of the following over the planning horizon:

1. The combined impact of all demand-side resources on the base-case forecast of summer and winter peak demands;

2. The composition, by program and demand-side rate, of the capacity provided by demand-side resources;

3. The composition, by supply-side resource, of the capacity supplied to the transmission grid provided by supply-side resources. Existing supply-side resources may be shown as a single resource;

4. The combined impact of all demand-side resources on the base-case forecast of annual energy requirements;

5. The composition, by program and demand-side rate, of the annual energy provided by demand-side resources;

6. The composition, by supply-side resource, of the annual energy supplied to the transmission grid, less losses, provided by supply-side resources. Existing supply-side resources may be shown as a single resource;

7. Annual emissions of each environmental pollutant identified pursuant to 4 CSR 240-22.040(2)(B);

8. Annual probable environmental costs; and

9. Public and highly-confidential forms of the capacity balance spreadsheets completed in the specified format;

(C) The analysis of economic impact of alternative resource plans, calculated with and without utility financial incentives for demand-side resources, shall provide comparative estimates for each year of the planning horizon—

1. For the following performance measures for each year:

A. Estimated annual revenue requirement;

B. Estimated annual average rates and percentage increase in the average rate from the prior year; and

C. Estimated company financial ratios and credit metrics; and

2. If the estimated company financial ratios in subparagraph (4)(C)1.C. are below investment grade in any year of the planning horizon, a description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating in each year of the planning horizon and the resulting performance measures in subparagraphs (4)(C)1.A.–(4)(C)1.C. of the alternative resource plans that are associated with the necessary changes in legal mandates and cost recovery mechanisms.

(6) The utility shall describe and document its assessment of the impacts and interrelationships of critical uncertain factors on the expected performance of each of the alternative resource plans developed pursuant to 4 CSR 240-22.060(3) and analyze the risks associated with alternative resource plans. This assessment shall explicitly describe and document the probabilities that utility decision-makers assign to each critical uncertain factor.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1766–1769). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to document its preferred resource plan and three (3)-year implementation plan. The MEEIA rules do not require a demand-side program to be part of the latest preferred plan, if a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the commission to approve MEEIA demand-side programs will be met through the requirements of this rule.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on

a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.070(1)(C). This subsection requires a utility to select a preferred resource plan that utilizes demand-side resources to the maximum amount that comply with legal mandates and in the judgment of the utility are in the public interest and achieve state energy policies. The Department of Natural Resources proposes additional language in subsection (1)(C) that would specifically give the commission authority to identify the state energy and environmental policies with which the utility is expected to comply. DNR's proposed language would also make it clear that the utility does not get to choose which energy and environmental policies it will attempt to achieve.

Ameren Missouri would also modify the language of this subsection by requiring the utility to choose a plan that is in the interest of shareholders as well as that of the public.

RESPONSE: Providing the commission authority to identify which energy and environmental policies shall apply, as proposed by DNR, does not change, and is included under the over-arching policy statement of proposed 4 CSR 240-22.010(2). Also, in response to Ameren Missouri's comment, the commission believes that it is not necessary to add utility shareholders to the list of consideration that makes up the public interest as shareholders are a part of the public interest. The commission will not modify this subsection.

COMMENT #7: Change to Subsection 4 CSR 240-22.070(4)(C). Public counsel would remove the word "fundamental" as the modifier of "the objectives in 4 CSR 240-22.010(2)."

RESPONSE AND EXPLANATION OF CHANGE: Public counsel's proposal is unnecessary as 4 CSR 240-22.010(2) specifically describes the fundamental objective of these rules and thus the reference is appropriate. However, public counsel's suggestion exposes a related problem in that the proposed rule refers to the plural fundamental objectives rather than the singular fundamental objective. The commission will remove the "s" from objectives to make it singular.

COMMENT #8: Changes to Subsection 4 CSR 240-22.070(7)(C). Public counsel suggests adding the words "identification of" to this subsection to clarify the meaning of the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will modify the subsection accordingly.

COMMENT #9: Changes to Section 4 CSR 240-22.070(8). This is the section of the rule that requires a utility to evaluate its demand-side programs and demand-side rates. Renew Missouri points out that the requirements of this section differ from those of the evaluation, measurement, and verification plans required by the MEEIA rules. Renew Missouri suggests this section be modified to match as closely as possible the similar provisions in the MEEIA rule.

In addition to the changes proposed by Renew Missouri, public counsel suggests minor edits throughout the section to improve the clarity of the section. Specifically, public counsel would add a requirement to evaluate cost-effectiveness to (8), would specify "future" cost-effectiveness screening in (8), would specify "demand-side" rate participants in (8)(B)1.A, add "hourly load data" to the list in (8)(B)2.A, and add "survey" data to (8)(B)2.B.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the suggestion of Renew Missouri that the evaluation, measurement, and verification plans for Chapter 22 rules and for the MEEIA rules should be aligned. The commission will modify this section.

The commission agrees with the edits proposed by public counsel and will modify the section accordingly.

COMMENT #10: Deletion of Section 4 CSR 240-22.070(9). Public counsel suggests this section is largely duplicative of section 4 CSR 240-22.080(12) and would delete most of it, while moving non-duplicative provisions to 4 CSR 240-22.080(12).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will delete the section.

4 CSR 240-22.070 Resource Acquisition Strategy Selection

(4) The utility shall describe and document its contingency resource plans in preparation for the possibility that the preferred resource plan should cease to be appropriate, whether due to the limits identified pursuant to 4 CSR 240-22.070(2) being exceeded or for any other reason.

(B) The utility shall develop a process to pick among alternative resource plans, or to revise the alternative resource plans as necessary, to help ensure reliable and low cost service should the preferred resource plan no longer be appropriate for any reason. The utility may also use this process to confirm the viability of contingency resource plans identified pursuant to subsection (4)(A).

(C) Each contingency resource plan shall satisfy the fundamental objective in 4 CSR 240-22.010(2) and the specific requirements pursuant to 4 CSR 240-22.070(1).

(7) The utility shall develop, describe and document, officially adopt, and implement a resource acquisition strategy. This means that the utility's resource acquisition strategy shall be formally approved by an officer of the utility who has been duly delegated the authority to commit the utility to the course of action described in the resource acquisition strategy. The officially adopted resource acquisition strategy shall consist of the following components:

(C) A set of contingency resource plans developed pursuant to the requirements of section (4) of this rule and identification of the point at which the critical uncertain factors would trigger the utility to move to each contingency resource plan as the preferred resource plan.

(8) Evaluation of Demand-Side Programs and Demand–Side Rates. The utility shall describe and document its evaluation plans for all demand-side programs and demand-side rates that are included in the preferred resource plan selected pursuant to 4 CSR 240-22.070(1). Evaluation plans required by this section are for planning purposes and are separate and distinct from the evaluation, measurement, and verification reports required by 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7); nonetheless, the evaluation plan should, in addition to the requirements of this section, include the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7). The evaluation plans for each program and rate shall be developed before the program or rate is implemented and shall be filed when the utility files for approval of demand-side programs or demand-side program plans with the tariff application for the program or rate as described in 4 CSR 240-20.094(3). The purpose of these evaluations shall be to develop the information necessary to evaluate the cost-effectiveness and improve the design of existing and future demand-side programs and demand-side rates, to improve the forecasts of customer energy consumption and responsiveness to demand-side programs and demand-side rates, and to gather data on the implementation costs and load impacts of demand-side programs and demand-side rates for use in future cost-effectiveness screening and integrated resource analysis.

(B) Impact Evaluation. The utility shall develop methods of estimating the actual load impacts of each demand-side program and demand-side rate included in the utility's preferred resource plan to a reasonable degree of accuracy.

1. Impact evaluation methods. At a minimum, comparisons of one (1) or both of the following types shall be used to measure program and rate impacts in a manner that is based on sound statistical principles:

A. Comparisons of pre-adoption and post-adoption loads of program or demand-side rate participants, corrected for the effects of weather and other intertemporal differences; and

B. Comparisons between program and demand-side rate participants' loads and those of an appropriate control group over the same time period.

2. The utility shall develop load-impact measurement protocols that are designed to make the most cost-effective use of the following types of measurements, either individually or in combination:

A. Monthly billing data, hourly load data, load research data, end-use load metered data, building and equipment simulation models, and survey responses; or

B. Audit and survey data on appliance and equipment type, size and efficiency levels, household or business characteristics, or energy-related building characteristics.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

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RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

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RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

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Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Change to the Purpose Statement. The Missouri Department of Natural Resources proposes to add a sentence to the purpose statement regarding the commission's authority to acknowledge the reasonableness of the preferred resource plan or resource acquisition strategy.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and will modify the purpose statement.

COMMENT #7: Clarifications of Section 4 CSR 240-22.080(1). Staff proposes to delete a portion of this section to clarify that Kansas City Power and Light Company (KCP&L) and Greater Missouri Operations Company (GMO), even though they are affiliated utilities, will be required to file separate Integrated Resource Plans (IRPs). The rule will allow the utilities to file those IRPs at the same time in the same case file. Public counsel supports staff's interpretation and modification of the section. KCP&L and GMO responded at the hearing by pointing out that requiring separate IRPs from the two (2) affiliated utilities may result in individual company plans that do not exactly coincide with the corporate strategy of the holding company that controls both utilities.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff. So long as KCPL and GMO are operated as separate utilities, they should be required to file separate IRPs. The commission will modify the rule as staff requests.

COMMENT #8: Change to Subparagraph 4 CSR 240-22.080(2)(E)5.B. Public counsel would add language to this subparagraph to focus on the level of average retail rates and percentage change from the prior year.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify the subparagraph accordingly.

COMMENT #9: Change to Sections 4 CSR 240-22.080(7), (8), and (9). The Department of Natural Resources proposes multiple changes to this rule to implement its proposal to allow the commission an option to acknowledge a utility's preferred resource plan. DNR would extend the time for staff and other stakeholders to review the utility's filing and file a report from one hundred twenty (120) days to one hundred fifty (150) days to recognize the additional time required to consider acknowledgement of the utility's filing. Similarly, DNR would extend the time allowed for negotiation of a joint agreement to remedy deficiencies in section (9) from forty-five (45) to sixty (60) days. DNR would also allow for the identification of "substantive concerns" in line with the definition of "substantive concerns" that DNR proposed in 4 CSR 240-22.020(5). (See Comment #15 for that Order of Rulemaking).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR except for the need to add a definition for "substantive concern." The commission will modify the sections accordingly.

COMMENT #10: Changes to Sections 4 CSR 240-22.080(7) and (8). These sections allow staff and other interested parties one hundred twenty (120) days to review the IRP filings submitted by a utility. Section (7) applies to staff and section (8) applies to other interested parties. The proposed rule would require anyone who identifies a deficiency in a plan to provide at least one (1) suggested remedy for each identified deficiency and to provide workpapers within one (1) week. Public counsel asks the commission to remove the requirement to provide a suggested remedy, reasoning that being able to identify a problem does not necessarily imply the ability to develop a solution. Interested stakeholders, such as public counsel, may have only limited resources and requiring them to not only identify, but also propose solutions to problems might discourage them from raising concerns about legitimate deficiencies. Public counsel proposes to change the requirement to a permissive request by changing "shall" to "may." It would also remove the requirement to produce workpapers.

Staff accepts public counsel's concern about discouraging the identification of deficiencies without accompanying solutions, but would not totally remove the requirement. Instead, staff would modify section (8) to require other interested parties to make only a good faith effort to provide at least one (1) suggested remedy for each identified deficiency.
RESPONSE AND EXPLANATION OF CHANGE: Since staff indicates it is comfortable with a requirement that it propose at least one (1) suggested remedy for each identified deficiency, the commission will not modify this aspect of section (7). The commission agrees with staff's suggested change to section (8), which applies to public counsel and other interested parties, and will modify the section accordingly. The commission will also modify the requirement to produce workpapers to clarify that an interested party is required to provide only such workpapers as they possess and are not required to create workpapers just to comply with this section of the rule.

COMMENT #11: Changes to Section 4 CSR 240-22.080(12). This section requires a utility to notify the commission if between its triennial IRP filings, it determines that its business plan or acquisition strategy has become inconsistent with its preferred resource plan, or if it determines that its acquisition strategy or preferred resource plan is no longer appropriate. Dogwood asks the commission to add an express requirement that the utility also serve notice on all interested parties. Also, public counsel suggests that this section be modified to accommodate filing requirements contained in proposed 4 CSR 240-22.070(9), which at public counsel's suggestion, the commission has deleted.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood and public counsel and will modify the section accordingly.

COMMENT #12: Changes to Section 4 CSR 240-22.080(13). This section allows the commission to grant a variance from certain provisions of these rules upon written application made at least twelve (12) months before the compliance filing is due. Ameren Missouri suggests the commission add an exception to the section to allow a request for variance to be filed less than twelve (12) months before the compliance filing is due, upon a showing of good cause.

Staff does not oppose the concept of allowing a good cause exception, but contends the inclusion of such an exception in this section is unnecessary.
RESPONSE AND EXPLANATION OF CHANGE: The proposed rule would allow the commission to grant a variance from the provisions of 4 CSR 240-22.030 through 4 CSR 240-22.070. The commission agrees with Ameren Missouri that it should be able to grant a variance from the provisions of 4 CSR 240-22.080 as well. In addition, the commission will modify the section to allow the commission to grant a variance less than twelve (12) months prior to the filing upon a showing of good cause for the delay in filing the request for variance.

COMMENT #13: Changes to Section 4 CSR 240-22.080(16). The Department of Natural Resources would create a new subsection (16)(B) that would give the commission authority to acknowledge that a preferred resource plan or resource acquisition strategy seems reasonable in whole or in part at the time of the finding.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR's proposal to give the commission authority to acknowledge a preferred resource plan or resource acquisition strategy, but that authority would more appropriately appear in a new section 4 CSR 240-22.080(17). The subsequent section will be renumbered accordingly.

COMMENT #14: Staff's New Form. At the hearing, staff offered a reporting form that it failed to attach to the proposed amendment. The form describes the information the utility is expected to report regarding its forecast of Capacity Balance. Staff initially offered both public and confidential versions of the form, but after the commission's exchange with witnesses for KCPL and others at the public hearing, staff agrees that all information reported on the form should be confidential.
RESPONSE AND EXPLANATION OF CHANGE: Since all the information to be provided will be confidential, there is no reason to require a separate public version of the report. The commission will incorporate the highly confidential version of the form submitted by staff.

4 CSR 240-22.080 Filing Schedule, Filing Requirements, and Stakeholder Process

PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter. The purpose of the compliance review required by this chapter is not commission approval of the substantive findings, determinations, or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets the requirements of Chapter 22. However, if the commission determines that the filing substantially meets these requirements, the commission may further acknowledge that the preferred resource plan or resource acquisition strategy is reasonable in whole or in part at the time of the finding. This rule also establishes a mechanism for the utility to solicit and receive stakeholder input to its resource planning process.

(1) Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year 2009 shall make a filing with the commission every three (3) years on April 1. The electric utilities shall submit their triennial compliance filings on the following schedule:

(2) The utility's triennial compliance filings shall demonstrate compliance with the provisions of this chapter and shall include at least the following items:

(D) The forecast of capacity balance spreadsheet completed in the specified form, included herein, for the preferred resource plan and each candidate resource plan considered by the utility.

(E) An executive summary, separately bound and suitable for distribution to the public in paper and electronic formats. The executive summary shall be an informative non-technical description of the preferred resource plan and resource acquisition strategy. This document shall summarize the contents of the technical volume(s) and shall be organized by chapters corresponding to 4 CSR 240-22.030–4 CSR 240-22.070. The executive summary shall include:

1. A brief introduction describing the utility, its existing facilities, existing purchase power arrangements, existing demand-side programs, existing demand-side rates, and the purpose of the resource acquisition strategy;

2. For each major class and for the total of all major classes, the base load forecasts for peak demand and for energy for the planning horizon, with and without utility demand-side resources, and a listing of the economic and demographic assumptions associated with each base load forecast;

3. A summary of the preferred resource plan to meet expected energy service needs for the planning horizon, clearly showing the demand-side resources and supply-side resources (both renewable and non-renewable resources), including additions and retirements for each resource type;

4. Identification of critical uncertain factors affecting the preferred resource plan;

5. For existing legal mandates and approved cost recovery mechanisms, the following performance measures of the preferred resource plan for each year of the planning horizon:

A. Estimated annual revenue requirement;

B. Estimated level of average retail rates and percentage of change from the prior year; and

C. Estimated company financial ratios;

6. If the estimated company financial ratios in subparagraph (2)(E)5.C. of this rule are below investment grade in any year of the planning horizon, a description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating in each year of the planning horizon and the resulting performance measures of the preferred resource plan;

7. Actions and initiatives to implement the resource acquisition strategy prior to the next triennial compliance filing; and

8. A description of the major research projects and programs the utility will continue or commence during the implementation period; and

(7) The staff shall conduct a limited review of each triennial compliance filing required by this rule and shall file a report not later than one hundred fifty (150) days after each utility's scheduled triennial compliance filing date. The report shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and any other deficiencies and shall provide at least one (1) suggested remedy for each identified deficiency. Staff may also identify concerns with the utility's triennial compliance filing, may identify concerns related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy, and shall provide at least one (1) suggested remedy for each identified concern. Staff shall provide its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed. If the staff's limited review finds no deficiencies or no concerns, the staff shall state that in the report. A staff report that finds that an electric utility's filing is in compliance with this chapter shall not be construed as acceptance or agreement with the substantive findings, determinations, or analysis contained in the electric utility's filing.

(8) Also within one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and any other deficiencies. The report may also identify concerns with the utility's triennial compliance filing and may identify concerns related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy. Public counsel or intervenors shall make a good faith effort to provide at least one (1) suggested remedy for each identified deficiency or concern. Public counsel or any intervenor shall provide its workpapers, if any, related to each deficiency or concern to all parties within ten (10) days of the date its report is filed.

(9) If the staff, public counsel, or any intervenor finds deficiencies

in or concerns with a triennial compliance filing, it shall work with the electric utility and the other parties to reach, within sixty (60) days of the date that the report or comments were submitted, a joint agreement on a plan to remedy the identified deficiencies and concerns. If full agreement cannot be reached, this should be reported to the commission through a joint filing as soon as possible but no later than sixty (60) days after the date on which the report or comments were submitted. The joint filing should set out in a brief narrative description those areas on which agreement cannot be reached. The resolution of any deficiencies and concerns shall also be noted in the joint filing.

(12) If, between triennial compliance filings, the utility's business plan or acquisition strategy becomes materially inconsistent with the preferred resource plan, or if the utility determines that the preferred resource plan or acquisition strategy is no longer appropriate, either due to the limits identified pursuant to 4 CSR 240-22.070(2) being exceeded or for other reasons, the utility, in writing, shall notify the commission within sixty (60) days of the utility's determination and shall serve notice on all parties to the most recent triennial compliance filing. The notification shall include a description of all changes to the preferred plan and acquisition strategy, the impact of each change on the present value of revenue requirement, and all other performance measures specified in the last filing pursuant to 4 CSR 240-22.080 and the rationale for each change.

(A) If the utility decides to implement any of the contingency resource plans identified pursuant to 4 CSR 240-22.070(4), the utility shall file for review a revised resource acquisition strategy. In this filing, the utility shall specify the ranges or combinations of outcomes for the critical uncertain factors that define the limits within which the new alternative resource plan remains appropriate.

(B) If the utility decides to implement a resource plan not identified pursuant to 4 CSR 240-22.070(4) or changes its acquisition strategy, it shall give a detailed description of the revised resource plan or acquisition strategy and why none of the contingency resource plans identified in 4 CSR 240-22.070(4) were chosen. In this filing, the utility shall specify the ranges or combinations of outcomes for the critical uncertain factors that define the limits within which the new alternative resource plan remains appropriate.

(13) Upon written application made at least twelve (12) months prior to a triennial compliance filing, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of 4 CSR 240-22.030–4 CSR 240-22.080 for good cause shown. The commission may grant an application for waiver or variance filed less than twelve (12) months prior to the triennial compliance filing upon a showing of good cause for the delay in filing the application for waiver or variance.

(17) If the commission finds that the filing achieves substantial compliance with the requirements outlined in section (16), the commission may acknowledge the utility's preferred resource plan or resource acquisition strategy as reasonable at a specific date. The commission may acknowledge the preferred resource plan or resource acquisition strategy in whole, in part, with exceptions, or not at all. Acknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects. In proceedings where the reasonableness of resource acquisitions are considered, consistency with an acknowledged preferred resource plan or resource acquisition strategy may be used as supporting evidence but shall not be considered any more or less relevant than any other piece of evidence in the case. Consistency with an acknowledged preferred resource plan or resource acquisition strategy does not create a rebuttable presumption of prudence and shall not be considered to be dispositive of the issue. Furthermore, in such proceedings, the utility bears the burden of proof that past or proposed actions are consistent with an acknowledged preferred resource plan or resource acquisition strategy and must explain and justify why it took any actions inconsistent with an acknowledged preferred resource plan or resource acquisition strategy.

(A) The utility shall notify the commission pursuant to 4 CSR 240-22.080(12) in the event there is material reason why any plan acknowledged by the commission is no longer viable.

(B) Any interested stakeholder group may file a notice in the utility's most recent Chapter 22 compliance file with the commission if a substantial change in circumstances has occurred that it believes may result in the invalidation of any aspect of a preferred resource plan or portion of a resource acquisition strategy previously acknowledged by the commission.

(C) The utility about which a stakeholder group files a notice described in the previous section may file its response within fifteen (15) working days of the date the notice is filed.

(18) In all future cases before the commission which involve a requested action that is affected by electric utility resources, preferred resource plan, or resource acquisition strategy, the utility must certify that the requested action is substantially consistent with the preferred resource plan specified in the most recent triennial compliance filing or annual update report. If the requested action is not substantially consistent with the preferred resource plan, the utility shall provide a detailed explanation.

Forecast of Capacity Balance (MW) - HIGHLY CONFIDENTIAL

Name of Utility: _____

Year of Electric Utility Resource Planning Filing: _____

	Year 1	Year 2	Year 3	Year 4	Year 5	.....	Year 20
A. System Generation Capacity							
Base Capacity							
Unit 1							
Unit 2							
Unit 3							
Unit 4							
.....							
Unit i							
Total Base Capacity							
Intermediate Capacity							
Unit i+1							
Unit i+2							
Unit i+3							
Unit i+4							
.....							
Unit j							
Total Intermediate Capacity							
Peaking Capacity							
Unit j+1							
Unit j+2							
Unit j+3							
.....							
Unit k							
Total Peaking Capacity							
Intermittent Capacity							
Wind							
Solar							
Total Intermittent Capacity							
Percent Accredited Intermittent Capacity							
Total Accredited Intermittent Capacity							
Total Generation Capacity = TGC							
B. Capacity Transactions							
Purchases							
Source 1							
Source 2							
Source 3							
.....							
Source t							
Total Purchases = P							
Sales							
Party 1							
Party 2							
.....							
Party s							
Total Sales = S							
Net Transactions = NT = P - S							
Total System Capacity = TSC = TGC + NT							
C. System Peaks & Reserves							
Peak Demands							
Forecasted Peak							
less DSM							
Peak Forecast less DSM = PF							
Capacity Reserves = CR = TSC - PF							
D. Capacity Needs							
% Reserve Margin = RM							
% Capacity Margin = CM = RM/(1 + RM)							
Required Capacity = RC = PF/(1-CM)							
Capacity Balance = TSC - RC							

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 8—Design Guides

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, the Clean Water Commission amends a rule as follows:

10 CSR 20-8.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2010 (35 MoReg 1454–1475). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held January 12, 2011, and the public comment period ended January 19, 2011. At the public hearing, the Water Protection Program staff explained the proposed amendment. The department received four (4) written comments from one (1) individual and four (4) department staff comments.

COMMENT #1: David Cavender, P.E., with Horner & Shifrin, Inc., requested that 10 CSR 20-8.020 Design of Small Sewage Works, may be applied to treatment facilities with design flows up to one hundred thousand (100,000) gallons per day (gpd).
RESPONSE: This request is outside of the purview of this amendment change. The department does plan on amending 10 CSR 20-8.020 in the future to apply to wastewater treatment facilities with design flows less than one hundred thousand (100,000) gpd. Until that time, consultants may request deviations and the department will review those on a case-by-case basis. No changes have been made to the rule as a result of this comment.

COMMENT #2: David Cavender, P.E., with Horner & Shifrin, Inc., requested changing the word "must" to "should" in subsection (3)(C): "Engineering reports or facility plans must be approved by the department prior to the submittal of the design drawings, specifications, and the appropriate permit applications and fees."
RESPONSE: The requirement of an engineering report or facility plan is the basis for the rulemaking amendment and for the public and private fiscal notes. Requiring an engineering report or facility plan approval prior to the submittal of plans and specifications results in better designed wastewater treatment facilities and collection systems. Approval of engineering reports or facility plans will reduce project delays and expensive design changes. No changes have been made to the rule as a result of this comment.

COMMENT #3: David Cavender, P.E., with Horner & Shifrin, Inc., suggested adding the following statement to the end of paragraph (4)(B)3.: "A stress test is recommended for treatment facilities where existing wet weather flows are problematic."
RESPONSE: The purpose of this paragraph is to provide guidance on what information shall be contained in an engineering report. The proposed text requires the impact on the treatment facility be evaluated due to the proposed collection system project. A stress test would provide information on the capacity the treatment facility is capable of handling. This would be good information, but the intent of the regulation is to determine the impact of the proposed collection system project. No changes have been made to the rule as a result of this comment.

COMMENT #4: David Cavender, P.E., with Horner & Shifrin, Inc., suggested adding the following statement to the end of part (4)(C)4.B.(III): "A stress test is recommended for treatment facilities where existing wet weather flows are problematic."
RESPONSE: The purpose of this regulation is to require hydraulic data and the method to determine hydraulic capacity of a wastewater treatment facility for a facility plan. A stress test on an existing facility is a good idea; however, these tests can be difficult, expensive, or impractical for certain facilities. If a facility wishes to perform a stress test and provide the results to the department, they are welcome to do so. No changes have been made to the rule as a result of this comment.

COMMENT #5: Department staff suggested simplifying the fifth sentence in the purpose statement.
RESPONSE AND EXPLANATION OF CHANGE: Staff agreed and removed text from the fifth sentence in the purpose. This was determined to be an improvement of the rule language.

COMMENT #6: Department staff discovered a typo in part (4)(C)4.C.(III) of the rule.
RESPONSE AND EXPLANATION OF CHANGE: Staff recognized the typo as "services lines," which will be changed to remove the "s" from service. Correcting this minor typographical error improved and clarified the rule language.

COMMENT #7: Department staff discovered a wrong citation in subparagraph (4)(C)8.J.
RESPONSE AND EXPLANATION OF CHANGE: Staff recognized this wrong citation and changed it to paragraph (6)(A)5. Correcting this citation error improved and clarified the rule language.

COMMENT #8: Department staff suggested clarifying subsection (7)(A) and compare and compose it to agree with the 2004 version of the "Recommended Standards for Wastewater Facilities" (otherwise known as the 10 States Standards) Paragraph 21 developed by the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.
RESPONSE AND EXPLANATION OF CHANGE: Staff decided to divide subsection (7)(A) into two (2) sentences for clarification. Staff also changed the language in subsection (7)(A) to more closely align the text to the 10 States Standards.

10 CSR 20-8.110 Engineering—Reports, Plans, and Specifications

PURPOSE: The following criteria have been prepared as a guide for the preparation of engineering reports or facility plans and detail plans and specifications. This rule is to be used with rules 10 CSR 20-8.120 through 10 CSR 20-8.220 for the planning and design of the complete treatment facility. This rule reflects the minimum requirements of the Missouri Clean Water Commission in regard to adequacy of design, submission of plans, approval of plans, and approval of completed wastewater treatment facilities. It is not reasonable or practical to include all aspects of design in these standards. The design engineer should obtain appropriate reference materials which include but are not limited to: copies of all ASTM International standards, design manuals such as Water Environment Federation's Manuals of Practice (MOPs), and other sewer and wastewater treatment design manuals containing principles of accepted engineering practice. Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation. These criteria are taken largely from the 2004 edition of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers ***Recommended Standards for Wastewater Facilities*** *and are based on the best information presently available. These criteria were originally filed as 10 CSR 20-8.030. It is anticipated that they will be subject to review and revision periodically as additional information and methods appear.*

(4) Engineering Report or Facility Plan.

(C) Facility Plans. Facility plans shall contain the following and other pertinent information as required by the department:

1. Problem evaluation and existing facility review—

A. Descriptions of existing system, including condition and evaluation of problems needing correction; and

B. Summary of existing and previous local and regional wastewater facility and related planning documents, if applicable;

2. Planning and service area. Drawings identifying the planning area, the existing and potential future service area, the site of the project, and anticipated location and alignment of proposed facilities are required;

3. Population projection and planning period. Present and predicted population shall be based on a twenty (20)-year planning period. Phased construction of wastewater facilities shall be considered in rapid growth areas. Sewers and other facilities with a design life in excess of twenty (20) years shall be designed for the extended period;

4. Hydraulic capacity.

A. Flow definitions and identification. The following flows for the design year shall be identified and used as a basis for design for sewers, pump stations, wastewater treatment facilities, treatment units, and other wastewater handling facilities. Where any of the terms defined in this section are used in these design standards, the definition contained in this section applies.

(I) Design average flow—The design average flow is the average of the daily volumes to be received for a continuous twelve (12)-month period expressed as a volume per unit time. However, the design average flow for facilities having critical seasonal high hydraulic loading periods (e.g., recreational areas, campuses, and industrial facilities) shall be based on the daily average flow during the seasonal period.

(II) Design maximum daily flow—The design maximum daily flow is the largest volume of flow to be received during a continuous twenty-four (24)-hour period expressed as a volume per unit time.

(III) Design peak hourly flow—The design peak hourly flow is the largest volume of flow to be received during a one (1)-hour period expressed as a volume per unit time.

(IV) Design peak instantaneous flow—The design peak instantaneous flow is the instantaneous maximum flow rate to be received.

B. Hydraulic capacity for existing collection and treatment systems.

(I) Projections shall be made from actual flow data to the extent possible.

(II) The probable degree of accuracy of data and projections shall be evaluated. This reliability estimation shall include an evaluation of the accuracy of existing data, based on no less than one (1) year of data, as well as an evaluation of the reliability of estimates of flow reduction anticipated due to infiltration/inflow (I/I) reduction or flow increases due to elimination of sewer overflows and backups.

(III) Critical data and methodology used shall be included. Graphical displays of critical peak wet weather flow data (refer to parts (4)(C)4.A.(II), (III), and (IV) of this rule) shall be included for a sustained wet weather flow period of significance to the project.

C. Hydraulic capacity for new collection and treatment systems.

(I) The sizing of wastewater facilities receiving flows from new wastewater collection systems shall be based on an average daily flow of one hundred (100) gallons (0.38 m^3) per capita per day plus wastewater flow from industrial facilities and major institutional and commercial facilities unless water use data or other justification upon which to better estimate flow is provided.

(II) The one hundred (100) gallons (0.38 m^3) per capita per day figure shall be used, which, in conjunction with a peaking factor from the following Figure 1, included herein, is intended to cover normal infiltration for systems built with modern construction techniques. Refer to 10 CSR 20-8.120.

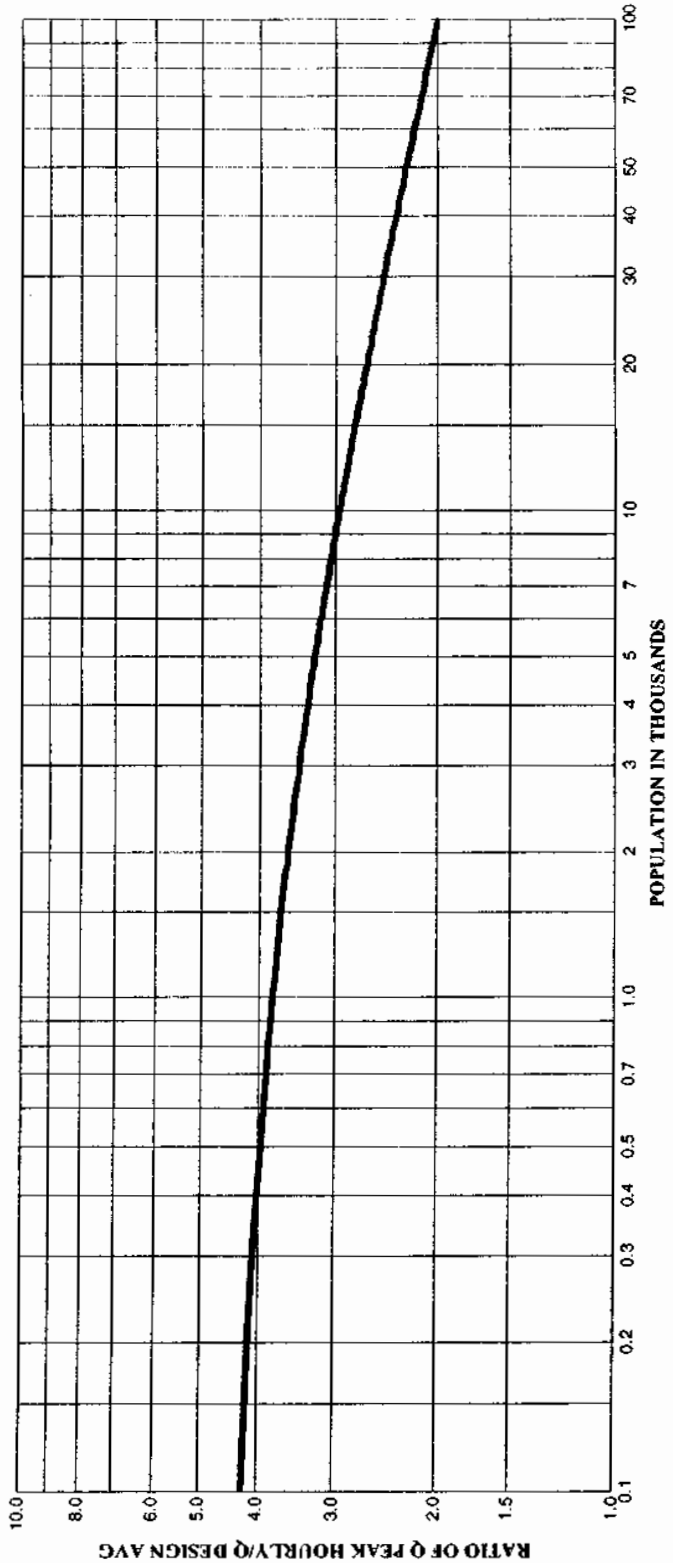

Figure 1. Ratio of peak hourly flow to design average flow.

where

Q peak hourly = Maximum Rate of Wastewater Flow (Peak Hourly Flow)
Q design avg = Design Average Daily Wastewater Flow

Equation: Q Peak Hourly/Q Design Avg = $\frac{18 + \sqrt{P}}{4 + \sqrt{P}}$

where

P = population in thousands

(III) If the new collection system is to serve existing development, the likelihood of infiltration/inflow (I/I) contributions from existing service lines and non-wastewater connections to those service lines shall be evaluated and wastewater facilities designed accordingly.

D. Combined sewer interceptors. In addition to the above requirements, interceptors for combined sewers shall have capacity to receive sufficient quantity of combined wastewater for transport to treatment facilities to ensure attainment of the appropriate water quality standards;

5. Organic capacity.

A. Organic load definitions and identification. The following organic loads for the design year shall be identified and used as a basis for design of wastewater treatment facilities. Where any of the terms defined in this section are used in these design standards, the definition contained in this section applies.

(I) Biochemical Oxygen Demand—The five (5)-day Biochemical Oxygen Demand (BOD_5) is defined as the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5)-day period.

(a) Total five (5)-day Biochemical Oxygen Demand ($TBOD_5$) is equivalent to BOD_5 and is sometimes used in order to differentiate carbonaceous plus nitrogenous oxygen demand from strictly carbonaceous oxygen demand.

(b) The carbonaceous five (5)-day Biochemical Oxygen Demand ($CBOD_5$) is defined as BOD_5 less the nitrogenous oxygen demand of the wastewater.

(II) Design average BOD_5—The design average BOD_5 is generally the average of the organic load received for a continuous twelve (12)-month period for the design year expressed as weight per day. However, the design average BOD_5 for facilities having critical seasonal high loading periods (e.g., recreational areas, campuses, and industrial facilities) shall be based on the daily average BOD_5 during the seasonal period.

(III) Design maximum day BOD_5—The design maximum day BOD_5 is the largest amount of organic load to be received during a continuous twenty-four (24)-hour period expressed as weight per day.

(IV) Design peak hourly BOD_5—The design peak hourly BOD_5 is the largest amount of organic load to be received during a one (1)-hour period expressed as weight per day.

B. Design of organic capacity of wastewater treatment facilities to serve existing collection systems.

(I) Projections shall be made from actual wasteload data to the extent possible.

(II) Projections shall be compared to subparagraph (4)(C)5.C. of this rule and an accounting made for significant variations from those values.

(III) Impact of industrial sources shall be documented.

C. Organic capacity of wastewater treatment facilities to serve new collection systems.

(I) Domestic wastewater treatment design shall be on the basis of at least 0.17 pounds (0.08 kg) of BOD_5 per capita per day and 0.20 pounds (0.09 kg) of suspended solids per capita per day, unless information is submitted to justify alternate designs.

(II) Impact of industrial sources shall be documented.

(III) Data from similar municipalities may be utilized in the case of new systems. However, thorough investigation that is adequately documented shall be provided to the department to establish the reliability and applicability of such data;

6. Wastewater treatment facility design capacity. The wastewater treatment facility design capacity is the design average flow at the design average BOD_5. Refer to paragraphs (4)(C)4. and (4)(C)5. of this rule for peaking factors that will be required.

A. Engineering criteria. Engineering criteria and assumptions used in the design of the project shall be provided in the facility plan. Refer to subsection (4)(D) of this rule for additional information.

B. If the project includes the land application of wastewater, the requirements in 10 CSR 20-8.220 must be included with the facility plan;

7. Initial alternative development. For projects receiving funding through the grant and loan programs in 10 CSR 20-4, the process of selection of wastewater treatment and collection system alternatives for detailed evaluation shall be discussed. All wastewater management alternatives considered and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation shall be included;

8. Detailed alternative evaluation. The following shall be included for the alternatives to be evaluated in detail.

A. Sewer system revisions. Proposed revisions to the existing sewer system including adequacy of portions not being changed by the project.

B. Wet weather flows. Facilities to transport and treat wet weather flows in a manner that complies with state and local regulations must be provided. The design of wastewater treatment facilities and sewers shall provide for transportation and treatment of all flows including wet weather flows unless the owner's National Pollutant Discharge Elimination System (NPDES) permit authorizes a bypass.

C. Site evaluation. When a site must be used which is critical with respect to these items, appropriate measures shall be taken to minimize adverse impacts.

(I) Compatibility of the treatment process with the present and planned future land use, including noise, potential odors, air quality, and anticipated sludge processing and disposal techniques, shall be considered. Non-aerated lagoons should not be used if excessive sulfate is present in the wastewater. Wastewater treatment facilities should be separate from habitation or any area likely to be built up within a reasonable future period and shall be separated in accordance with state and local requirements.

(II) Zoning and other land use restrictions shall be identified.

(III) An evaluation of the accessibility and topography of the site shall be submitted.

(IV) Area for future plant expansion shall be identified.

(V) Direction of prevailing wind shall be identified.

(VI) Flood considerations, including the twenty-five (25)-year and one hundred (100)-year flood levels, impact on floodplain and floodway, and compliance with applicable regulations in 10 CSR 20-8 regarding construction in flood-prone areas, shall be evaluated.

(VII) Geologic information, depth to bedrock, karst features, or other geologic considerations of significance to the project shall be included. A copy of a geological site evaluation from the department's Division of Geology and Land Survey providing stream determinations (gaining or losing) must be included for all new wastewater treatment facilities. A copy of a geological site evaluation providing site collapse and overall potentials from the department's Division of Geology and Land Survey must be included for all earthen basin structures. Earthen basin structures shall not be located in areas receiving a severe overall geological collapse potential rating.

(VIII) Protection of groundwater including public and private wells is of utmost importance. Demonstration that protection will be provided must be included. If the proposed wastewater facilities will be near a water source or other water facility, as determined by the department's Division of Geology and Land Survey or by the department's Public Drinking Water Branch addressing the allowable distance between these wastewater facilities and the water source must be included with the facility plan. Refer to 10 CSR 20-8.130 and 10 CSR 20-8.140.

(IX) Soil type and suitability for construction and depth to normal and seasonal high groundwater shall be determined.

(X) The location, depth, and discharge point of any field tile in the immediate area of the proposed site shall be identified.

(XI) Present and known future effluent quality and monitoring requirements determined by the department shall be included.

Refer to subparagraph (4)(C)8.N. of this rule.

(XII) Access to receiving stream for the outfall line shall be discussed and displayed.

(XIII) A preliminary assessment of site availability shall be included.

D. Unit sizing. Unit operation and preliminary unit process sizing and basis shall be discussed.

E. Flow diagram. A preliminary flow diagram of treatment facilities including all recycle flows shall be provided.

F. Emergency operation. Emergency operation requirements as outlined in 10 CSR 20-8.130 and 10 CSR 20-8.140 shall be discussed and provided.

G. The no-discharge option must be examined and included as an alternative in the facility plan.

H. Technology not included in these standards. 10 CSR 20-8.140 outlines procedures for introducing and obtaining approval to use technology not included in these standards. Proposals to use technology not included in these standards must address the requirements of 10 CSR 20-8.140.

I. Biosolids. The solids disposal options considered and method selected must be included. This is critical to completion of a successful project. Compliance with requirements of 10 CSR 20-8.170 and any conditions in the owner's National Pollutant Discharge Elimination System (NPDES) permit must be assured.

J. Treatment during construction. A plan for the method and level of treatment to be achieved during construction shall be developed and included in the facility plan that must be submitted to the department for review and approval. This approved treatment plan must be implemented by inclusion in the plans and specifications to be bid for the project. Refer to paragraph (6)(A)5. and subsection (7)(D) of this rule.

K. Operation and maintenance. Portions of the project which involve complex operation or maintenance requirements shall be identified, including laboratory requirements for operation, industrial sampling, and self monitoring.

L. Cost estimates. Cost estimates for capital and operation and maintenance (including basis) must be included for projects receiving funding through the grant and loan programs in 10 CSR 20-4.

M. Environmental review.

(I) Compliance with planning requirements of local government agencies must be documented.

(II) Any additional environmental information meeting the criteria in 10 CSR 20-4.050, for projects receiving funding through the state grant and loan programs.

N. Water quality reports. Include all reviews, studies, or reports required by 10 CSR 20-7, Water Quality, and approved by the department. Any information or sections in an approved study or report required by 10 CSR 20-7 that addresses the requirements in subsection (4)(C) of this rule can be incorporated into the facility plan in place of these sections;

9. Final project selection. The project selected from the alternatives considered under paragraph (4)(C)10. of this rule shall be set forth in the final facility plan document to be forwarded to the department for review and approval, including the financing considerations and recommendations for implementation of the plan; and

10. It is preferred that any request for a deviation from 10 CSR 20-8 be addressed along with the engineering justifications in the facility plan. Otherwise, all requests for deviations along with the engineering justification from 10 CSR 20-8.120 through 10 CSR 20-8.220 must accompany the plans and specifications.

(7) Specifications.

(A) Complete signed, sealed, and dated technical specifications shall be submitted for the construction of sewers, wastewater pumping stations, wastewater treatment plants, and all other appurtenances. Technical specifications shall accompany the plans.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 4—Membership and Creditable Service

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2010, the board of trustees hereby amends a rule as follows:

16 CSR 10-4.010 Membership Service Credit **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 18, 2011 (36 MoReg 230–231). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENT: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 6—The Public Education Employee Retirement System of Missouri

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.610, RSMo Supp. 2010, the board of trustees hereby amends a rule as follows:

16 CSR 10-6.040 Membership Service Credit **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 18, 2011 (36 MoReg 231). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENT: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.010 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.030 Contributions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.070 Vesting and Service **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527–528). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.080 Plan Administration **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 528). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Nursing under sections 324.001.10 and 335.036, RSMo Supp. 2010 and section 335.046, RSMo 2000, the board amends a rule as follows:

20 CSR 2200-4.010 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2011 (36 MoReg 831–833). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 528–536). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 528 and the public was given thirty (30) days from the date of publication to submit written comment. Six (6) public comments were received.

COMMENT #1: A representative of UMR commented regarding this proposed amendment that Missouri Consolidated Health Care Plan's (MCHCP's) 2011 State Handbook and 22 CSR 10-2.075 contain a definition of adverse benefit determination. For consistency this definition should be included in 22 CSR 10-2.010.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board will clarify the intent in the handbook in connection with the term adverse benefit determination in the context of utilization review.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that the definition of handbook refers to the 2010 State Member Handbook. It should reference the 2011 State Handbook and Enrollment Guide.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment the board amended the reference to the State Member Handbook as suggested.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification and consistency in both the proposed rules and the member handbook that there are no longer lifetime limits for members.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board believes no member has ever been termed or denied benefits as a result of a member having reached the lifetime maximum on the dollar value of non-network essential benefits. Nevertheless, we have included a notice in our handbook stating that there is no longer a lifetime maximum on the dollar value of non-network essential benefits.

COMMENT #4: A representative of UMR commented regarding this proposed amendment that UMR would like clarification regarding what is meant by "responsibility for health care" under "foster child" and "grandchild" in the definitions regarding dependents.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board removed "responsibility for health care" under "foster child" and "grandchild" definitions.

COMMENT #5: A representative of UMR commented regarding this proposed amendment that UMR would like clarification on the scope of coverage based on guardianship of minors when the minor reaches the age of majority. Does MCHCP stop covering individuals who were dependents under the guardianship of a minor category when they reach the age eighteen (18) or does the plan intend to cover these individuals to age twenty-six (26)?
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board has clarified its intention to allow for continued coverage of a dependent child based upon guardianship of a minor after the guardianship ends until age twenty-six (26) provided the guardianship was in effect the day before the dependent child under the guardianship turns eighteen (18) years of age.

COMMENT #6: Representatives on behalf of the Pharmaceutical Research and Manufacturers of America commented in opposition to the amendment to the definition of "generic drug" to include "therapeutic equivalent."
RESPONSE AND EXPLANATION OF CHANGE: The board has already clarified by emergency statement and clarifies here the decision to return to the previous definition of generic drug to prevent confusion and unintended consequences regarding the generic drugs covered by the plan.

22 CSR 10-2.010 Definitions

(29) Dependent child. Any child under the age of twenty-six (26) that is a natural child, legally adopted or placed for adoption child, or a child with one (1) of the following legal relationships with the member, so long as such legal relationship remains in effect:

(A) Stepchild;

(B) Foster child;

(C) Grandchild for whom the employee has legal guardianship or legal custody; and

(D) Other child for whom the employee is the court-ordered legal guardian.

1. Except for a disabled child as described in 22 CSR 10-2.010(89), a dependent child is eligible from his/her eligibility date to the end of the month he/she attains age twenty-six (26) (see paragraph 22 CSR 10-2.020(3)(D)2. for continuing coverage on a handicapped child beyond age twenty-six (26)).

2. A child who is a dependent child under a guardianship of a minor will continue to be a dependent child when the guardianship ends by operation of law when the child becomes eighteen (18) years of age if such child was an MCHCP member the day before the child becomes eighteen (18) years of age.

(49) Generic drug. The chemical equivalent of a brand-name drug with an expired patent. The color or shape may be different, but the active ingredients must be the same for both.

(51) Handbook. The summary plan document prepared for members explaining the terms, conditions, and all material aspects of the plan and benefits offered under the plan, a copy of which is incorporated by reference into this rule. The full text of material incorporated by reference is available to any interested person at the Missouri Consolidated Health Care Plan, 832 Weathered Rock Court, Jefferson City, MO 65101, 2011 State Member Handbook (March 15, 2011) or online at www.mchcp.org. It does not include any later amendments or additions.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 536–542). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 536 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: A representative of UMR commented that 22 CSR 10-2.020(2)(B)1.A. contradicts Missouri Consolidated Health Care Plan's (MCHCP's) 2011 State Member Handbook and Enrollment Guide and practices. He commented that MCHCP's current practice is to allow ninety (90) days for members to obtain proof of eligibility documentation for newborns.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified in the rules and MCHCP handbook for the statutory requirements on MCHCP under section 376.406, RSMo, and member requirements to meet eligibility criteria for continued newborn coverage beyond thirty-one (31) days from date of birth under the plan document.

COMMENT #2: A representative with UMR commented that the rules do not indicate how MCHCP computes deadlines for enrollment and eligibility information and that MCHCP's 2011 State and Public Entity Handbooks and Enrollment Guides and practices adhere to the following guideline: "Unless specifically stated otherwise, when MCHCP computes deadlines identified in this handbook, it counts Day One as the first day after the qualifying event. If the last day falls on a weekend or state holiday, MCHCP may receive required information on the first working day after the weekend or state holiday."
RESPONSE AND EXPLANATION OF CHANGE: The computation of deadline language was inadvertently removed from the 2011 State and Public Entity Handbooks and Enrollment Guides and, in response to this comment, has been reinserted into both documents.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-2.020 General Membership Provisions

(2) The effective date of participation shall be determined, subject to the effective date provision in subsection (2)(C), as follows:

(B) Dependent Coverage. Dependent participation cannot precede the subscriber's participation except when coverage is added as a life event with birth of a child or adoption of a child at birth. The effective date for a newborn is the date of birth. The subscriber and/or dependent's effective date is the first day of the calendar month coinciding with or following the date of the enrollment. Enrollment for participants must be made in accordance with the following provisions. Effective dates for all dependent coverage is wholly dependent upon—

1. Proof of eligibility documentation is required for all dependents. The plan reserves the right to request that such proof of eligibility be provided at any time upon request. If such proof is not received or is unacceptable as determined by the plan administrator, coverage for the applicable dependent will either be terminated or will never take effect.

A. For the addition of dependents: Required documentation should accompany the enrollment for coverage, except when adding a newborn. Failure to provide acceptable documentation with the enrollment will result in the dependent not having coverage until such proof is received, subject to the following:

(I) If proof of eligibility is not received with the enrollment, such proof will be requested by letter sent to the subscriber. Documentation shall be received no later than thirty (30) days from the date of the letter requesting such proof. Failure to provide the required documentation in a timely manner will result in the dependent being ineligible for coverage until the next open enrollment period unless a life event occurs; and

(II) Coverage is provided for a newborn of a member from the moment of birth.The member must notify the plan of the birth verbally or in writing within thirty-one (31) days of the birth date. The plan will notify the member of the steps to continue coverage. The member is allowed an additional ten (10) days from the date of the plan notice to return the enrollment form. Coverage will not continue unless the enrollment form is received within thirty-one (31) days of the birth date or ten (10) days from the date of the notice, whichever is later. Newborn proof of eligibility must be submitted with ninety (90) days of the date of birth. If proof of eligibility is not received, coverage will terminate on day ninety-one (91) from the date of birth;

2. Documentation is also required when a subscriber attempts to terminate a dependent's coverage in the case of divorce or death;

3. Acceptable forms of proof of eligibility are included in the following chart:

Circumstance	Documentation
Birth of dependent(s)	• Government-issued birth certificate or other government-issued or legally-certified proof of eligibility
Addition of step-child(ren)	• Marriage license to biological parent of child(ren); and • Birth certificate for child(ren) that names the subscriber's spouse as a parent
Addition of foster child(ren)	• Placement papers in subscriber's care
Adoption of dependent(s)	• Adoption papers; • Placement papers; or • Filed petition for adoption
Legal guardianship of dependent(s)	• Court-documented guardianship papers (Power of Attorney is not acceptable)
Newborn of covered dependent	• Government-issued birth certificate for newborn listing covered dependent as parent with baby's name and birth date
Marriage	• Marriage license; • Marriage certificate; or • Newspaper notice of the wedding
Divorce	• Final divorce decree; or • Notarized letter from spouse stating he/she is agreeable to termination of coverage pending divorce
Death	• Death certificate

4. For family coverage, once a subscriber is participating with respect to dependents, newly acquired dependents are automatically covered on their effective dates as long as the plan administrator is notified within thirty-one (31) days of the person becoming a dependent. First eligible dependents must be added within thirty-one (31) days of such qualifying event. The employee is required to notify the plan administrator on the appropriate form of the dependent's name, date of birth, eligibility date, and Social Security number. Members who are eligible for Medicare benefits under Part A, B, or D must notify the plan administrator of their eligibility and provide a copy of the member's Social Security and Medicare cards within thirty-one (31) days of eligibility of Medicare. Claims will not be processed until the required information is provided;

5. If an employee makes concurrent enrollment for dependent participation on or before the date of eligibility or within thirty-one (31) days thereafter, participation for dependent will become effective on the date the employee's participation becomes effective;

6. When an employee participating in the plan first becomes eligible with respect to a dependent child(ren), coverage may become effective on the eligibility date or the first day of the month coinciding with or following the date of eligibility if enrollment is made within thirty-one (31) days of the date of eligibility and provided any required contribution for the period is made; and

7. Survivors, retirees, vested subscribers, and long-term disability subscribers may only add dependents to their coverage when the dependent is first eligible for coverage, add dependents under the age of twenty-six (26) at open enrollment for the 2011 plan year only, add a newborn of a covered dependent, or when a dependent's employer-sponsored coverage ends due to one (1) of the following:

A. Termination of employment;

B. Retirement; or

C. Termination of group coverage by the employer. Coverage must have been in place for twelve (12) months immediately prior to the loss, and coverage must be requested within sixty (60) days from the termination date of the previous coverage;

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.045 Plan Utilization Review Policy **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 543–544). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-2.050 Copay Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 544). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.051 PPO 300 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 544–548). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.052 PPO 600 Plan Benefit Provisions and Covered Charges **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 549–552). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.053 High Deductible Health Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 553–556). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.054 Medicare Supplement Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 557–560). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.055 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 561–577). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 561 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: J. Esteban Varela, MD, Associate Professor of Surgery with Washington University Physicians commented in opposition to the dropping of bariatric surgery coverage for Missouri state employees who are severely obese and that "[e]xtending coverage of bariatric surgery care would promote Universal healthcare, decrease the overall direct medical state costs and improve health."

In support of his comment, Dr. Varela gave background information on the costs of obesity. Including that obesity is associated with other serious conditions, including Type 2 Diabetes Mellitus, cardiovascular disease, osteoarthritis, sleep apnea, premature death, and cancer. He also stated that ten percent (10%) of all medical costs, or $147 billion, in the U.S. are related to obesity.

Dr. Varela also commented that savings from bariatric surgery could be recouped in two (2) to four (4) years after surgery from reductions in prescription drug costs, physician visit costs, and hospital costs.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

COMMENT #2: A representative with UMR commented that UMR would like clarification regarding the coverage of X rays and lab services that are included under preventive services, in particular, the language stating "For benefits to be covered as preventative, including X rays and lab services, they must be coded by your physician as routine, without any indication of an injury or illness."

RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent to have routine lab and X-ray services ordered as part of an annual physical exam (well man, woman, and child) included as part of the one hundred percent (100%) coverage as long as the services are coded as routine, without indication of an injury or illness.

COMMENT #3: The president-elect of the Missouri Chapter of the American Society of Metabolic and Bariatric Surgery commented in opposition to the withdrawal of bariatric surgery benefits from Missouri Consolidated Health Care Plan (MCHCP) for 2011. In support of his comment, he also stated MCHCP will save money in the long run in reduced health care costs and increased employee productivity and longevity.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

22 CSR 10-2.055 Medical Plan Benefit Provisions and Covered Charges

(2) Covered Charges Applicable to the PPO 300, PPO 600, and HDHP Plans.

(D) Plan benefits for the PPO 300, PPO 600, and HDHP plans are as follows:

EDITOR'S NOTE: The only change to the State Benefits chart is in the Preventive Services section. This section is reprinted here. The remainder of the State Benefits chart remain as originally published.

Preventive Services
- Services recommended by the U.S. Preventive Services Task Force (categories A and B)
- Immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention
- Preventive care and screenings for infants, children, and adolescents supported by the Health Resources and Services Administration
- Preventive care and screenings for women supported by the Health Resources and Services Administration

Annual physical exams (Well man, woman, and child) and routine lab and X-ray services ordered as part of the annual exam - one per calendar year

Age-specific cancer screenings:
- Mammograms
- Pap smears
- Prostate cancer screenings
- Colorectal screenings
- Colonoscopy and sigmoidoscopy screenings

For benefits to be covered as preventive, including X-rays and lab services, they must be coded by your physician as routine, without indication of an injury or illness.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, and section 103.080.3, RSMo Supp. 2010, the director amends a rule as follows:

22 CSR 10-2.060 PPO 300 Plan, PPO 600 Plan, and HDHP Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 578–581). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-2.064 HMO Summary of Medical Benefits **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 582). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.075 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 582–587). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 582 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT #1: A representative with UMR commented that UMR would like clarification of the time frames for the first and second level appeals so there is consistency for Missouri Consolidated Health Care Plan (MCHCP) members in the rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified the time frames applicable to first and second level appeals.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-2.075 Review and Appeals Procedure

(3) Appeal Process for Medical and Pharmacy Determinations.

(A) Definitions. Notwithstanding any other rule in this chapter to the contrary, for purposes of a member's right to appeal any adverse benefit determination made by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor, relating to the provision of health care benefits, other than those provided in connection with the plan's dental or vision benefit offering, the following definitions apply.

1. Adverse benefit determination. An adverse benefit determination means any of the following:

A. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit, including any denial, reduction, termination, or failure to provide or make payment that is based on a determination of an individual's eligibility to participate in the plan;

B. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate; or

C. Any rescission of coverage once an individual has been covered under the plan.

2. Appeal (or internal appeal). An appeal or internal appeal means review by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor of an adverse benefit determination.

3. Claimant. Claimant means an individual who makes a claim under this subsection. For purposes of this subsection, references to claimant include a claimant's authorized representative.

4. External review. External review means a review of an adverse benefit determination (including a final internal adverse benefit determination) by the Missouri Department of Insurance, Financial Institutions and Professional Registration, Division of Consumer Affairs (DIFP) regarding covered medical and pharmacy benefits administered by plan vendors, UMR, Mercy Health Plans, or Express Scripts Inc., in accordance with state law and regulations promulgated by DIFP and made applicable to the plan by agreement and between the plan and DIFP pursuant to Technical Guidance from the U.S. Department of Health and Human Services dated September 23, 2010.

5. Final internal adverse benefit determination. A final internal

adverse benefit determination means an adverse benefit determination that has been upheld by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor at the completion of the internal appeals process under this subsection, or an adverse benefit determination with respect to which the internal appeals process has been deemed exhausted by application of applicable state or federal law.

6. Final external review decision. A final external review decision means a determination rendered under the DIFP external review process at the conclusion of an external review.

7. Rescission. A rescission means a termination or discontinuance of medical or pharmacy coverage that has retroactive effect except that a termination or discontinuance of coverage is not a rescission if—

A. The termination or discontinuance of coverage has only a prospective effect;

B. The termination or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or

C. The termination or discontinuance of coverage is effective retroactively at the request of the member in accordance with applicable provisions of this chapter regarding voluntary cancellation of coverage.

(B) Internal Appeals.

1. Eligibility, termination for failure to pay, or rescission. Adverse benefit determinations denying or terminating an individual's coverage under the plan based on a determination of the individual's eligibility to participate in the plan or the failure to pay premiums, or any rescission of coverage based on fraud or intentional misrepresentation of a member or authorized representative of a member are appealable exclusively to the Missouri Consolidated Health Care Plan (MCHCP) Board of Trustees (board).

A. The internal review process for appeals relating to eligibility, termination for failure to pay, or rescission shall consist of one (1) level of review by the board.

B. Adverse benefit determination appeals to the board must identify the eligibility, termination, or rescission decision being appealed and the reason the claimant believes the MCHCP staff decision should be overturned. The member should include with his/her appeal any information or documentation to support his/her appeal request.

C. The appeal will be reviewed by the board in a meeting closed pursuant to section 610.021, RSMo, and the appeal will be responded to in writing to the claimant within sixty (60) days from the date the board received the written appeal.

D. Determinations made by the board constitute final internal adverse benefit determinations and are not eligible for external review by DIFP.

2. Medical and pharmacy services. Members may request internal review of any adverse benefit determination relating to urgent care, pre-service claims, and post-service claims made by the plan's medical and pharmacy vendors.

A. Appeals of adverse benefit determinations shall be submitted in writing to the vendor that issued the original determination giving rise to the appeal at the applicable address set forth in this rule.

B. The internal review process for adverse benefit determinations relating to medical services consists of two (2) levels of internal review provided by the medical vendor that issued the adverse benefit determination.

(I) First level appeals must identify the decision being appealed and the reason the member believes the original claim decision should be overturned. The member should include with his/her appeal any additional information or documentation to support the reason the original claim decision should be overturned.

(II) First level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. First level medical appeals will be responded to in writing to the member within thirty (30) days for post-service claims and fifteen (15) days for pre-service claims from the date the vendor received the first level appeal request.

(III) An expedited appeal of an adverse benefit determination may be requested when a decision is related to a pre-service claim for urgent care. Expedited appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. Expedited appeals will be responded to within seventy-two (72) hours after receiving a request for an expedited review with written confirmation of the decision to the member within three (3) working days of providing notification of the determination.

(IV) Second level appeals must be submitted in writing within sixty (60) days of the date of the first level appeal decision letter that upholds the original adverse benefit determination. Second level appeals should include any additional information or documentation to support the reason the member believes the first level appeal decision should be overturned. Second level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision or first level appeal and will include consultation with a qualified medical professional if a medical judgment is involved. Second level medical appeals shall be responded to in writing to the member within thirty (30) days for post-service claims and within fifteen (15) days for pre-service claims from the date the vendor received the second level appeal request.

(V) For members with medical coverage through UMR—

(a) First level appeals must be submitted in writing to—

UMR Claims Appeal Unit
PO Box 30546
Salt Lake City, UT 84130-0546

(b) Second level appeals must be sent in writing to—

UMR Claims Appeal Unit
PO Box 8086
Wausau, WI 54402-8086

(c) Expedited appeals must be communicated by calling UMR telephone 1-866-868-7758 or by submitting a written fax to 1-866-912-8464, Attention: Appeals Unit.

(VI) For members with medical coverage through Mercy Health Plans—

(a) First and second level appeals must be submitted in writing to—

Mercy Health Plans
Attn: Corporate Appeals
14528 S. Outer 40 Road, Suite 300
Chesterfield, MO 63017

(b) Expedited appeals must be communicated by calling Mercy Health Plans telephone 1-800-830-1918, ext. 2394 or by submitting a written fax to 1-314-214-3233, Attention: Corporate Appeals.

C. The internal review process for adverse benefit determinations relating to pharmacy consists of one (1) level of internal review provided by the pharmacy vendor.

(I) Pharmacy appeals must identify the matter being appealed and should include the member's (and dependent's, if applicable) name, the date the member claimant attempted to fill the prescription, the prescribing physician's name, the drug name and quantity, the cost of the prescription, if applicable, the reason the claimant believes the claim should be paid, and any other written documentation to support the claimant's belief that the original decision should be overturned.

(II) All pharmacy appeals must be submitted in writing to—

Express Scripts
Clinical Appeals—MH3
6625 West 78th Street, BL0390
Bloomington, MN 55439
or by fax to 1-877-852-4070

(III) Pharmacy appeals will be reviewed by someone who was not involved in the original decision and the reviewer will consult with a qualified medical professional if a medical judgment is involved. Pharmacy appeals will be responded to in writing to the member within sixty (60) days for post-service claims and thirty (30) days for pre-service claims from the date the vendor received the appeal request.

D. Members may seek external review only after they have exhausted all applicable levels of internal review or received a final internal adverse benefit determination.

3. For all internal appeals of adverse benefit determinations, the plan or the vendor reviewing the appeal will provide the member, free of charge, with any new or additional evidence or rationale considered, relied upon, or generated by the plan or the vendor in connection with reviewing the claim or the appeal and will give the member an opportunity to respond to such new evidence or rationale before issuing a final internal adverse determination.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.090 Pharmacy Benefit Summary **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 588–591). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.091 Wellness Program Coverage, Provisions, and Limitations **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 592). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.092 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 593–596). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 593 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT: Lynn Pyle, Regional Vice President of Delta Dental Missouri, commented in opposition to this rule, stating that the proposed rule contradicts Delta Dental of Missouri's contract language with Missouri Consolidated Health Care Plan. The contract states that Delta Dental of Missouri will cover the allowed amount of a removable partial denture, not the cost of a removable partial denture.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent for coverage of the allowed amount for a removable partial denture.

22 CSR 10-2.092 Dental Benefit Summary

(4) Alternative Treatment. If alternative treatment plans are available, this dental plan will be liable for the least costly, professionally satisfactory course of treatment. This includes, but is not limited to, services such as composite resin fillings on molar teeth, in which case the benefits are based on the cost of the amalgam (silver) filling. This also includes fixed bridges, in which case the benefits will be based on the allowed amount of a removable partial denture.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.093 Vision Benefit Summary **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36

MoReg 597–603). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 604–611). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 604 and the public was given thirty (30) days from the date of publication to submit written comment. Six (6) public comments were received.

COMMENT #1: A representative of UMR commented regarding this proposed amendment that Missouri Consolidated Health Care Plan's (MCHCP's) 2011 Public Entity Handbook and 22 CSR 10-3.075 contain a definition of adverse benefit determination. For consistency this definition should be included in 22 CSR 10-3.010.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board will clarify the intent in the handbook in connection with the term adverse benefit determination in the context of utilization review.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that the definition of handbook refers to the 2010 Public Entity Member Handbook. It should reference the 2011 Public Entity Handbook and Enrollment Guide.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment the board amended the reference to the Public Entity Member Handbook as suggested.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification and consistency in both the proposed rules and the member handbook that there are no longer lifetime limits for members.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board believes no member has ever been termed or denied benefits as a result of a member having reached the lifetime maximum on the dollar value of non-network essential benefits. Nevertheless, we have included a notice in our handbook stating that there is no longer a lifetime maximum on the dollar value of non-network essential benefits.

COMMENT #4: A representative of UMR commented regarding this proposed amendment that UMR would like clarification regarding what is meant by "responsibility for health care" under "foster child" and "grandchild" in the definitions regarding dependents.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board removed "responsibility for health care" under "foster child" and "grandchild" definitions.

COMMENT #5: A representative of UMR commented regarding this proposed amendment that UMR would like clarification on the scope of coverage based on guardianship of minors when the minor reaches the age of majority. Does MCHCP stop covering individuals who were dependents under the guardianship of a minor category when they reach the age eighteen (18) or does the plan intend to cover these individuals to age twenty-six (26)?
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board has clarified its intention to allow for continued coverage of a dependent child based upon guardianship of a minor after the guardianship ends until age twenty-six (26) provided the guardianship was in effect the day before the dependent child under the guardianship turns eighteen (18) years of age.

COMMENT #6: Representatives on behalf of the Pharmaceutical Research and Manufacturers of America commented in opposition to the amendment to the definition of "generic drug" to include "therapeutic equivalent."
RESPONSE AND EXPLANATION OF CHANGE: The board has already clarified by emergency statement and clarifies here the decision to return to the previous definition of generic drug to prevent confusion and unintended consequences regarding the generic drugs covered by the plan.

22 CSR 10-3.010 Definitions

(29) Dependent child. Any child under the age of twenty-six (26) that is a natural child, legally adopted or placed for adoption child, or a child with one (1) of the following legal relationships with the member, so long as such legal relationship remains in effect:

(A) Stepchild;

(B) Foster child;

(C) Grandchild for whom the employee has legal guardianship or legal custody; and

(D) Other child for whom the employee is court-ordered legal guardian.

1. Except for a disabled child as described in 22 CSR 10-3.010(88), a dependent child is eligible from his/her eligibility date to the end of the month he/she attains age twenty-six (26).

2. A child who is a dependent child under a guardianship of a minor will continue to be a dependent child when the guardianship ends by operation of law when the child becomes eighteen (18) years of age if such child was an MCHCP member the day before the child becomes eighteen (18) years of age.

(49) Generic drug. A chemical equivalent of a brand-name drug with an expired patent. The color or shape may be different, but the active ingredients must be the same for both.

(51) Handbook. The summary plan document prepared for members explaining the terms, conditions, and all material aspects of the plan and benefits offered under the plan, a copy of which is incorporated by reference into this rule. The full text of material incorporated by reference is available to any interested person at the Missouri Consolidated Health Care Plan, 832 Weathered Rock Court, Jefferson City, MO 65101, 2011 Public Entity Member Handbook (March 15, 2011) or online at www.mchcp.org. It does not include any later amendments or additions.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.045 Plan Utilization Review Policy **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 611–612). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.050 Copay Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 612). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.051 PPO 300 Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.052 PPO 500 Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.053 PPO 1000 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613–617). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.054 PPO 2000 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 618–621). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, and section 103.080.3, RSMo Supp. 2010, the director amends a rule as follows:

22 CSR 10-3.055 High Deductible Health Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 622–625). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.056 PPO 600 Plan Benefit Provisions and Covered Charges **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 626–630). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.057 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 631–647). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the Missouri Register on February 1, 2011, Vol. 36, No. 3, on page 631 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: J. Esteban Varela, MD, Associate Professor of Surgery with Washington University Physicians commented in opposition to the dropping of bariatric surgery coverage for Missouri employees who are severely obese and that "[e]xtending coverage of bariatric surgery care would promote Universal healthcare, decrease the overall direct medical state costs and improve health."

In support of his comment, Dr. Varela gave background information on the costs of obesity. Including that obesity is associated with other serious conditions, including Type 2 Diabetes Mellitus, cardiovascular disease, osteoarthritis, sleep apnea, premature death, and cancer. He also stated that ten percent (10%) of all medical costs, or $147 billion, in the U.S. are related to obesity.

Dr. Varela also commented that savings from bariatric surgery could be recouped in two (2) to four (4) years after surgery from reductions in prescription drug costs, physician visit costs, and hospital costs.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

COMMENT #2: A representative with UMR commented that UMR would like clarification regarding the coverage of X rays and lab services that are included under preventive services, in particular, the language stating "For benefits to be covered as preventative, including X rays and lab services, they must be coded by your physician as routine, without any indication of an injury or illness."

RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent to have routine lab and X-ray services ordered as part of an annual physical exam (well man, woman, and child) included as part of the one hundred percent (100%) coverage as long as the services are coded as routine, without indication of an injury or illness.

COMMENT #3: The president-elect of the Missouri Chapter of the American Society of Metabolic and Bariatric Surgery commented in opposition to the withdrawal of bariatric surgery benefits from Missouri Consolidated Health Care Plan (MCHCP) for 2011. In support of his comment, he also stated MCHCP will save money in the long run in reduced health care costs and increased employee productivity and longevity.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

22 CSR 10-3.057 Medical Plan Benefit Provisions and Covered Charges

(2) Covered Charges Applicable to the PPO 600, PPO 1000, PPO 2000, and HDHP Plans.

(D) Plan benefits for the PPO 600, PPO 1000, PPO 2000, and HDHP Plans are as follows:

EDITOR'S NOTE: The only change to the Public Entity Benefits chart is in the Preventive Services section. This section is reprinted here. The remainder of the Public Entity Benefits chart remain as originally published.

Preventive Services
- Services recommended by the U.S. Preventive Services Task Force (categories A and B)
- Immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention
- Preventive care and screenings for infants, children, and adolescents supported by the Health Resources and Services Administration
- Preventive care and screenings for women supported by the Health Resources and Services Administration

Annual physical exams (Well man, woman, and child) and routine lab and X-ray services ordered as part of the annual exam - one per calendar year

Age-specific cancer screenings:
- Mammograms
- Pap smears
- Prostate cancer screenings
- Colorectal screenings
- Colonoscopy and sigmoidoscopy screenings

For benefits to be covered as preventive, including X-rays and lab services, they must be coded by your physician as routine, without indication of an injury or illness.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.060 PPO 600 Plan, PPO 1000 Plan, PPO 2000 Plan, and HDHP Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 648–651). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.075 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 652–656). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 652 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was made.

COMMENT #1: A representative with UMR commented that UMR would like clarification of the time frames for the first and second level appeals so there is consistency for Missouri Consolidated Health Care Plan (MCHCP) members in the rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified the time frames applicable to first and second level appeals.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-3.075 Review and Appeals Procedure

(3) Appeal Process for Medical and Pharmacy Determinations.

(A) Definitions. Notwithstanding any other rule in this chapter to the contrary, for purposes of a member's right to appeal any adverse benefit determination made by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor, relating to the provision of health care benefits, other than those provided in connection with the plan's dental or vision benefit offering, the following definitions apply.

1. Adverse benefit determination. An adverse benefit determination means any of the following:

A. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit, including any denial, reduction, termination, or failure to provide or make payment that is based on a determination of an individual's eligibility to participate in the plan;

B. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate; or

C. Any rescission of coverage once an individual has been covered under the plan.

2. Appeal (or internal appeal). An appeal or internal appeal means review by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor of an adverse benefit determination.

3. Claimant. Claimant means an individual who makes a claim under this subsection. For purposes of this subsection, references to claimant include a claimant's authorized representative.

4. External review. External review means a review of an adverse benefit determination (including a final internal adverse benefit determination) by the Missouri Department of Insurance, Financial Institutions and Professional Registration, Division of Consumer Affairs (DIFP) regarding covered medical and pharmacy benefits administered by plan vendors, UMR, Mercy Health Plans, or Express Scripts Inc., in accordance with state law and regulations promulgated by DIFP and made applicable to the plan by agreement and between the plan and DIFP pursuant to Technical Guidance from the U.S. Department of Health and Human Services dated September 23, 2010.

5. Final internal adverse benefit determination. A final internal adverse benefit determination means an adverse benefit determination that has been upheld by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor at the completion of the internal appeals process under this subsection, or an adverse benefit determination with respect to which the internal appeals process has been deemed exhausted by application of applicable state or federal law.

6. Final external review decision. A final external review decision means a determination rendered under the DIFP external review process at the conclusion of an external review.

7. Rescission. A rescission means a termination or discontinuance of medical or pharmacy coverage that has retroactive effect except that a termination or discontinuance of coverage is not a rescission if—

A. The termination or discontinuance of coverage has only a prospective effect;

B. The termination or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or

C. The termination or discontinuance of coverage is effective retroactively at the request of the member in accordance with applicable provisions of this chapter regarding voluntary cancellation of coverage.

(B) Internal Appeals.

1. Eligibility, termination for failure to pay, or rescission. Adverse benefit determinations denying or terminating an individual's

coverage under the plan based on a determination of the individual's eligibility to participate in the plan or the failure to pay premiums, or any rescission of coverage based on fraud or intentional misrepresentation of a member or authorized representative of a member are appealable exclusively to the Missouri Consolidated Health Care Plan (MCHCP) Board of Trustees (board).

A. The internal review process for appeals relating to eligibility, termination for failure to pay, or rescission shall consist of one (1) level of review by the board.

B. Adverse benefit determination appeals to the board must identify the eligibility, termination, or rescission decision being appealed and the reason the claimant believes the MCHCP staff decision should be overturned. The member should include with his/her appeal any information or documentation to support his/her appeal request.

C. The appeal will be reviewed by the board in a meeting closed pursuant to section 610.021, RSMo, and the appeal will be responded to in writing to the claimant within sixty (60) days from the date the board received the written appeal.

D. Determinations made by the board constitute final internal adverse benefit determinations and are not eligible for external review by DIFP.

2. Medical and pharmacy services. Members may request internal review of any adverse benefit determination relating to urgent care, pre-service claims, and post-service claims made by the plan's medical and pharmacy vendors.

A. Appeals of adverse benefit determinations shall be submitted in writing to the vendor that issued the original determination giving rise to the appeal at the applicable address set forth in this rule.

B. The internal review process for adverse benefit determinations relating to medical services consists of two (2) levels of internal review provided by the medical vendor that issued the adverse benefit determination.

(I) First level appeals must identify the decision being appealed and the reason the member believes the original claim decision should be overturned. The member should include with his/her appeal any additional information or documentation to support the reason the original claim decision should be overturned.

(II) First level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. First level medical appeals will be responded to in writing to the member within thirty (30) days for post-service claims and fifteen (15) days for pre-service claims from the date the vendor received the first level appeal request.

(III) An expedited appeal of an adverse benefit determination may be requested when a decision is related to a pre-service claim for urgent care. Expedited appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. Expedited appeals will be responded to within seventy-two (72) hours after receiving a request for an expedited review with written confirmation of the decision to the member within three (3) working days of providing notification of the determination.

(IV) Second level appeals must be submitted in writing within sixty (60) days of the date of the first level appeal decision letter that upholds the original adverse benefit determination. Second level appeals should include any additional information or documentation to support the reason the member believes the first level appeal decision should be overturned. Second level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision or first level appeal and will include consultation with a qualified medical professional if a medical judgment is involved. Second level medical appeals shall be responded to in writing to the member within thirty (30) days for post-service claims and within fifteen (15) days for pre-service claims from the date the vendor received the second level appeal request.

(V) For members with medical coverage through UMR—

(a) First level appeals must be submitted in writing to—

UMR Claims Appeal Unit
PO Box 30546
Salt Lake City, UT 84130-0546

(b) Second level appeals must be sent in writing to—

UMR Claims Appeal Unit
PO Box 8086
Wausau, WI 54402-8086

(c) Expedited appeals must be communicated by calling UMR telephone 1-866-868-7758 or by submitting a written fax to 1-866-912-8464, Attention: Appeals Unit.

(VI) For members with medical coverage through Mercy Health Plans—

(a) First and second level appeals must be submitted in writing to—

Mercy Health Plans
Attn: Corporate Appeals
14528 S. Outer 40 Road, Suite 300
Chesterfield, MO 63017

(b) Expedited appeals must be communicated by calling Mercy Health Plans telephone 1-800-830-1918, ext. 2394 or by submitting a written fax to 1-314-214-3233, Attention: Corporate Appeals.

C. The internal review process for adverse benefit determinations relating to pharmacy consists of one (1) level of internal review provided by the pharmacy vendor.

(I) Pharmacy appeals must identify the matter being appealed and should include the member's (and dependent's, if applicable) name, the date the member claimant attempted to fill the prescription, the prescribing physician's name, the drug name and quantity, the cost of the prescription, if applicable, the reason the claimant believes the claim should be paid, and any other written documentation to support the claimant's belief that the original decision should be overturned.

(II) All pharmacy appeals must be submitted in writing to—

Express Scripts
Clinical Appeals—MH3
6625 West 78th Street, BL0390
Bloomington, MN 55439
or by fax to 1-877-852-4070

(III) Pharmacy appeals will be reviewed by someone who was not involved in the original decision and the reviewer will consult with a qualified medical professional if a medical judgment is involved. Pharmacy appeals will be responded to in writing to the member within sixty (60) days for post-service claims and thirty (30) days for pre-service claims from the date the vendor received the appeal request.

D. Members may seek external review only after they have exhausted all applicable levels of internal review or received a final internal adverse benefit determination.

3. For all internal appeals of adverse benefit determinations, the plan or the vendor reviewing the appeal will provide the member, free of charge, with any new or additional evidence or rationale considered, relied upon, or generated by the plan or the vendor in connection with reviewing the claim or the appeal and will give the member an opportunity to respond to such new evidence or rationale before issuing a final internal adverse determination.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.090 Pharmacy Benefit Summary **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 657–660). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.092 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 661–666). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 661 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT: Lynn Pyle, Regional Vice President of Delta Dental Missouri, commented in opposition to this rule, stating that the proposed rule contradicts Delta Dental of Missouri's contract language with Missouri Consolidated Health Care Plan. The contract states that Delta Dental of Missouri will cover the allowed amount of a removable partial denture, not the cost of a removable partial denture. RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent for coverage of the allowed amount for a removable partial denture.

22 CSR 10-3.092 Dental Benefit Summary

(4) Alternative Treatment. If alternative treatment plans are available, this dental plan will be liable for the least costly, professionally satisfactory course of treatment. This includes, but is not limited to, services such as composite resin fillings on molar teeth, in which case the benefits are based on the cost of the amalgam (silver) filling. This also includes fixed bridges, in which case the benefits will be based on the allowed amount of a removable partial denture.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.093 Vision Benefit Summary **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 667–673). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

NOTIFICATION OF REVIEW: APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for July 11, 2011. These applications are available for public inspection at the address shown below.

Date Filed
Project Number: Project Name
City (County)
Cost, Description

04/22/11

#4628 RS: King City Manor
King City (Gentry County)
$2,087,049, Establish 24-bed assisted living facility (ALF)

04/27/11

#4629 RS: Advance Assisted Living
Advance (Stoddard County)
$2,642,000, Establish 44-bed ALF

04/28/11

#4635 RS: McCrite Plaza at Briarcliff Assisted Living
Kansas City (Clay County)
$4,547,417, Establish 40-bed ALF

#4627 RS: Valley View Memory Care II
Lee's Summit (Jackson County)
$2,000,000, Establish 17-bed ALF

04/29/11

#4676 HS: Kindred Hospital Kansas City
Kansas City (Jackson County)
$181,504, Replace hyperbaric oxygen chambers

#4660 HS: Lafayette Regional Health Center
Lexington (Lafayette County)
$40,000,000, Establish 32-bed critical access hospital

#4662 HS: Barnes-Jewish Hospital
St. Louis (St. Louis City)
$1,763,076, Acquire endovascular lab

#4622 RS: Prive' Living Well
St. Louis (St. Louis County)
$5,616,443, Establish 120-bed ALF

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by June 1, 2011. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
Post Office Box 570
Jefferson City, MO 65102

For additional information, contact
Donna Schuessler, (573) 751-6403.

Updated: 4/4/2011 10:23:31 AM

Construction Transient Employers

The following is a list of all construction contractors performing work on construction projects in Missouri who are known by the Department of Revenue to be transient employers pursuant to Section 285.230, RSMo. This list is provided as a guideline to assist public bodies with their responsibilities under this section that states, "any county, city, town, village or any other political subdivision which requires a building permit for a person to perform certain construction projects shall require a transient employer to show proof that the employer has been issued a tax clearance and has filed a financial assurance instrument as required by Section 285.230 before such entity issues a building permit to the transient employer."

Contractor	Address	City	State	Zip
1ST INTERIORS INC	1100 SE WESTBROOKE DRIVE	WAUKEE	IA	50263
20/20 THEATRICAL	141 STATE HWY 371 S STE 2	HACKENSACK	MN	56452
A & B PROCESS SYSTEMS CORP	201 S WISCONSIN AVE	STRATFORD	WI	54484
A & K RENTALS LLC	11325 EIFF RD	MARISSA	IL	62257
A MALLORY CONCRETE CONTRACTING INC	17601 STORAGE ROAD #7	OMAHA	NE	68145
A TURF INC	505 AERO DR	CHEEKTOWAGA	NY	14225
ACADEMY ROOFING & SHEET METAL CO	6361 NE 14TH ST	DES MOINES	IA	50313
ACE REFRIGERATION OF IOWA INC	6440 6TH ST SW	CEDAR RAPIDS	IA	52404
ACE/AVANT CONCRETE CONSTRUCTION CO INC	109 SEMINOLE DR	ARCHDALE	NC	27263
ACME ELECTRIC COMPANY OF IOWA	3353 SOUTHGATE COURT SW	CEDAR RAPIDS	IA	52404
ACRONYM MEDIA INC	350 5TH AVE STE 5501	NEW YORK	NY	10118
ACTION INSTALLERS INC	1224 CAMPBELL AVE SE	ROANOKE	VA	24013
ADDISON CONSTRUCTION CO	1526 HORSE CREEK RD	CHEYENNE	WY	82009
ADK ELECTRIC INC	9000 NE 90TH STREET	VANCOUVER	WA	98662
ADVANTAGE PROFESSIONAL OF PHOENIX LLC	1995 WEHRLE DR	WILLIAMSVILLE	NY	14221
AE MFG INC	2505 S 33RD W AVE	TULSA	OK	74157
AJ FLOORING INC	2005 KIMBER ROAD	DONGOLA	IL	62926
AKERMAN CONSTRUCTION CO INC	2915 SH 74 SOUTH	PURCELL	OK	73080
ALEGION INC	5266 IVY CREEK ROAD	RUTLEDGE	AL	36071
ALLIANCE INTEGRATED SYSTEMS INC	1500 STUDEMONT	HOUSTON	TX	77007
ALLIED STEEL CONSTRUCTION CO LLC	2211 NW FIRST TERRACE	OKLAHOMA CITY	OK	73107
ALS CONSTRUCTION INC	16506 PINE VALLEY ROAD	PINE	CO	80470
ALTRESS TRUCKING INC	220 W 440 N	WASHINGTON	IN	47501
AM COHRON & SON INC READY MIX CONCRETE	PO BOX 479	ATLANTIC	IA	50022
AMERICAN COATINGS INC	612 W IRIS DR	NASHVILLE	TN	37204
AMERICAN HYDRO	1029 IRS AVE	BALTIMORE	MD	21205
AMERICAN INDUSTRIAL REFRIGERATION INC	1633 EUSTIS	ST PAUL	MN	55108
AMERICAN LIFT & SIGN SERVICE COMPANY	6958 NO 97TH PLAZA	OMAHA	NE	68122
AMERICAN PRESERVATION BUILDERS LLC	8111 ROCKSIDE RD STE 101	VALLEY	OH	44125
AMRENT CONTRACTING INC	3981 STATE RT 3 NORTH	CHESTER	IL	62233
APOLLO VIDEO TECHNOLOGY	14148 NE 190TH ST	WOODINVILLE	WA	98072
ARBY CONSTRUCTION COMPANY INC	19705 W LINCOLN AVE	NEW BERLIN	WI	53146

Contractor	Address	City	State	Zip
ARCHITECTURAL SURFACES INC	312 MORNINGSIDE STE A	FRIENDSWOOD	TX	77546
ARCHITECTURAL WALL SYSTEMS CO	3000 30TH ST	DES MOINES	IA	50310
ARNOLDS CUSTOM SEEDING LLC	4626 WCR 65	KEENESBURG	CO	80643
ASPHALT STONE COMPANY	520 N WEBSTER	JACKSONVILLE	IL	62650
ASSOCIATED GROCERS OF THE SOUTH INC	3600 VANDERBILT ROAD	BIRMINGHAM	AL	35217
ATLANTIC ENGINEERING GROUP INC	1136 ZION CHURCH RD	BRASELTON	GA	30517
ATLAS INDUSTRIAL HOLDINGS LLC	5275 SINCLAIR RD	COLUMBUS	OH	43229
ATWOOD ELECTRIC INC	23124 HIGHWAY 149	SIGOURNEY	IA	52591
B D WELCH CONSTRUCTION LLC	120 INDUSTRIAL STATION RD	STEELE	AL	35987
B&B ELECTRICAL CONTRACTORS INC	627 CIRCLE DR	IRON MOUNTAIN	MI	49801
BD CONSTRUCTION INC.	209 EAST 6TH STREET	KEARNEY	NE	68847
BENCOR CORPORATION OF AMERICA FOUNDATION SPECIALST	2315 SOUTHWELL RD	DALLAS	TX	75229
BERBERICH TRAHAN & CO PA	3630 SW BURLINGAME ROAD	TOPEKA	KS	66611
BERNIE JANNING TERRAZZO & TILE INC	17509 HWY 71	CARROLL	IA	51401
BEST PLUMBING & HEATING	421 SECTION OD	SCAMMON	KS	66773
BESTORE INC	6750 W 75TH STE 1A	OVERLAND PARK	KS	66204
BETTIS ASPHALT & CONSTRUCTION INC	2350 NW WATER WORKDS DR	TOPEKA	KS	66606
BIG BLOCK INC	1340 W MAIN	OLATHE	KS	66061
BIGGE CRANE AND RIGGING CO	10700 BIGGE AVE	SAN LEANDRO	CA	94577
BLACK CONSTRUCTION CO	18483 US HIGHWAY 54	ROCKPORT	IL	62370
BLAHNIK CONSTRUCTION CO	150 50TH AVE DR SW	CEDAR RAPIDS	IA	52404
BLD SERVICES LLC	2424 TYLER STREET	KENNER	LA	70062
BLUE SKY CONSTRUCTION LLC	17501 NORTHSIDE BLVD	NAMPA	ID	83687
BLUE WATER ENVIRONMENTAL INC	29041 WICK RD	ROMULUS	MI	48170
BOB FLORENCE CONTRACTOR INC	1934 S KANSAS AVE	TOPEKA	KS	66612
BODINE ELECTRIC OF DECATUR	1845 NORTH 22ND ST	DECATUR	IL	62526
BOREAL AVIATION INC	401 AVENUE F	GWINN	MI	49841
BRADFORD BUILDING COMPANY	2151 OLD ROCKY RIDGE RD	BIRMINGHAM	AL	35216
BRB CONTRACTORS INC	400 W CURTIS	TOPEKA	KS	66608
BRIDGE CONSTRUCTION MANAGEMENT SERVICES LLC	11209 STRANG LINE ROAD	LENEXA	KS	66215
BROCK SERVICES LTD	1670 E CARDINAL DR	BEAUMONT	TX	77704
BROOKS DIRECTIONAL DRILLING LLC	24531 102ND DRIVE	BURDEN	KS	67019
BRUCE CONCRETE CONSTRUCTION INC	4401 HWY 162	GRANITE CITY	IL	62040
BRUSH TURBO GENERATORS INC	15110 NW FRWY STE 150	HOUSTON	TX	77040
BRYAN-OHLMEIER CONST INC	911 NORTH PEARL	PAOLA	KS	66071
BUMPYS STEEL ERECTION LLC	327 MISSOURI AVENUE	EAST ST LOUIS	IL	62201
C ALEXANDER CONSTRUCTION	744 HORIZON CT STE 135	GRAND JUNCTION	CO	81506
C2 FINANCIAL CORPORATION	10509 VISTA SORRENTO 200	SAN DIEGO	CA	92121
CAM OF ILLINOIS LLC	300 DANIEL BOONE TRAIL	SOUTH ROXANA	IL	62087
CAPITAL INSULATION INC	3210 NE MERIDEN RD	TOPEKA	KS	66617
CARPENTERS PLUS INC	1171 W DENNIS	OLATHE	KS	66061

Contractor	Address	City	State	Zip
CAS CONSTRUCTION LLC	501 NE BURGESS	TOPEKA	KS	66608
CASE FOUNDATION CO	1325 W LAKE ST	ROSELLE	IL	60172
CBS CONSTRUCTORS	204 E 1ST	MCCOOK	NE	69001
CCC GROUP INC	5797 DIETRICH RD	SAN ANTONIO	TX	78219
CCI SYSTEMS INC	105 KENT ST	IRON MOUNTAIN	MI	49801
CELLXION WIRELESS SERVICES LLC	5031 HAZEL JONES RD	BOSSIER CITY	LA	71111
CENTRAL FOUNDATION INC	915 MARION RD S	CENTRAL CITY	IA	52214
CENTRAL ILLINOIS TILE CO	3302 N MATTIS AVE	CHAMPAIGN	IL	61821
CENTRAL SEAL COMPANY	P O BOX 490	DANVILLE	KY	40422
CETCO CONTRACTING SERVICES COMPANY	900 NORTHBROOK DR STE 320	TREVOSE	PA	19053
CHANCE CONSTRUCTION CO	ITALY & BARBER ST	HEMPHILL	TX	75948
CHASE CONTRACTORS INC	800 W 35TH PARKWAY	CHANUTE	KS	66720
CHERNE CONTRACTING CORPORATION	9855 W 78TH ST STE 400	EDEN PRAIRIE	MN	55344
CHRIS GEORGE HOMES INC	2111 E SANTA FE #112	OLATHE	KS	66062
CK CONSTRUCTION	6938 STAGGE ROAD	STURGEON BAY	WI	54235
CK II CONTRACTING INC	7700 FORSYTH AVE	CLAYTON	MO	63105
CLASSIC DESIGN	665 ELMWOOD DRIVE	TROY	MI	48083
CLEARWATER CONSTRUCTION	584 ROCKY ROAD	LUXEMBURG	WI	54217
COAST TO COAST BUILDERS INC	750 E FUNSTON	WICHITA	KS	67211
COASTAL GUNITE CONSTRUCTION CO	16 WASHINGTON ST	CAMBRIDGE	MD	21613
COBB MECHANICAL CONTRACTORS INC	2906 W MORRISON	COLORADO SPRINGS	CO	80904
COLE RAYWID & BRAVERMAN LLP	1919 PENNSYLAVANIA AVE NW	WASHINGTON	DC	20006
COMMERCIAL CONTRACTORS INC	16745 COMSTOCK STREET	GRANDHAVEN	MI	49417
COMMERCIAL INTERIORS INC	90 NEWBERRY DR	LINN VALLEY	KS	66040
CONCO INC	3030 ALL HALLOWS	WICHITA	KS	67217
CONLON CONSTRUCTION CO	1100 ROCKDALE RD	DUBUQUE	IA	52003
CONSTRUCTION SERVICES BRYANT INC	232 NEW YORK ST	WICHITA	KS	67214
COOPERS STEEL FABRICATORS	PO BOX 149	SHELBYVILLE	TN	37162
CREEK ELECTRIC INC	2811 W PAWNEE ST	WICHITA	KS	67213
CROSS COUNTY CONSTRUCTION INC	RR 2 VANCIL RD HWY 24	RUSHVILLE	IL	62681
CROWN CORR INC	7100 W 21ST AVE	GARY	IN	46406
CUMMINGS, MCCLOREY, DAVIS, ACHO & ASSOCIATES PC	33900 SCHOOLCRAFT	LIVONIA	MI	48150
CYC CONSTRUCTION INC	10003 S 152N ST	OMAHA	NE	68138
D & B INDUSTRIAL FLOOR COATINGS INC	W137 N8589 LANDOVER CRT	MENOMONEE FALLS	WI	53051
D & D INDUSTRIAL CONTRACTING INC	101 MULLEN DR	WALTON	KY	41094
D & T ROOFING LLC	1437 JAMES DRIVE	KAUFMAN	TX	75142
D A SMITH ENTERPRISES LLC	7532 N SHIRLEY LANE	TUCSON	AZ	85741
D T READ STEEL COMPANY INC	1725 WEST ROAD	CHESAPEAKE	VA	23323
DAMATO BUILDERS + ADVIS0RS LLC	40 CONNECTICUT AVE	NORWICH	CT	06360
DANNYS CONSTRUCTION CO INCORPORATED	1066 WEST THIRD AVENUE	SHAKOPEE	MN	55379
DAVID BOLAND INC	SE ARNOLD & PERIMETER RD	WHITEMAN AFB	MO	65305

Contractor	Address	City	State	Zip
DB HEALTHCARE INC	128 WHEELER ROAD	BURLINGTON	MA	01803
DCG PETERSON BROTHERS COMPANY	5005 S HWY 71	SIOUX RAPIDS	IA	50585
DEAN STEEL ERECTION COMPANY INC	5366 N VALLEY PIKE	HARRISONBURG	VA	22803
DEEP SOUTH FIRE TRUCKS INC	2342 HIGHWAY 49 NORTH	SEMINARY	MS	39479
DIAMOND CONSTRUCTION COMPANY	2000 N 18TH ST	QUINCY	IL	62301
DIAMOND SURFACE INC	13792 REIMER DR N	MAPLE GROVE	MN	55311
DIG AMERICA UTILITY CONTRACTING INC	606 25TH AVE SO STE 202	ST CLOUD	MN	56301
DOME CORPORATION OF NORTH AMERICA	5450 EAST ST	SAGINAW	MI	48601
DON BORNEKE CONSTRUCTION INC	41537 50TH ST	JANESVILLE	MN	56048
DOSTER CONSTRUCTION CO INC	2100 INTERNATIONAL PARK D	BIRMINGHAM	AL	35243
DOUBLE O MASONRY INC	722 S 260TH ST	PITTSBURG	KS	66762
DPLM	1704 E EUCLID AVE	DES MOINES	IA	50313
DRC EMERGENCY SERVICES LLC	740 MUSEUM DRIVE	MOBILE	AL	36608
DUALTEMP INSTALLATIONS INC DBA DUAL TEMP WISCONSIN	3695 J N 126TH STREET	BROOKFIELD	WI	53005
DUBOIS TORREY	503 SAND HILL ROAD	LUXEMBURG	WI	54217
DUNK FIRE & SECURITY INC	3446 WAGON WHEEL RD	SPRINGDALE	AR	72762
DUREX COVERINGS INC	53 INDUSTRIAL RD	BROWNSTOWN	PA	17508
DUSTROL INC	GEN DEL	EL DORADO	KS	67042
DWG & ASSOCIATES INC	8535 SOUTH 700 WEST	SANDY	UT	84070
DYAS & DYAS CONSTRUCTION CONSULTANTS LLC	17500 LAKE RIDGE DRIVE	CANYON	TX	79015
DYER ELECTRIC	8171 TOP FLITE CIRCLE	ROGERS	AR	72756
DYNOTEC INC	2931 E DUBLIN GRANVILLE	COLUMBUS	OH	43231
E ROBERTS ALLEY & ASSOCIATES INC	300 10TH AVE S	NASHVILLE	TN	37203
E80 PLUS CONSTRUCTORS LLC	600 BASSETT ST	DEFOREST	WI	53532
ECHO CONSTRUCTION INC	14012 GILES RD	OMAHA	NE	68138
ECONOMY ELECTRICAL CONTRACTORS	101 CENTURY 21 DR #204	JACKSONVILLE	FL	32216
EDWARDS KAMADULSKI LLC	2230 CLEVELAND AVENUE	EAST ST LOUIS	IL	62205
ELECTRIC CONSTRUCTION CO	1512 E 17TH ST	SIOUX FALLS	SD	57104
ELECTRICAL BUILDERS INC	20246 EDGEWOOD RD	KIMBALL	MN	56353
ELECTRICIANS THE	197 S MCCLEARY RD	EXCELSIOR SPRINGS	MO	64024
ELECTRICO INC	7706 WAGNER ROAD	MILLSTADT	IL	62260
ELEMENTS DESIGN BUILD LLC	1136 HILLTOP DR	LAWRENCE	KS	66044
EMCO CHEMICAL DISTRIBUTORS INC	2100 COMMONWEALTH AVE	NORTH CHICAGO	IL	60064
EMERALD CONSTRUCTION MANAGEMENT INC	794 VENTURA ST STE A	AURORA	CO	80011
EMPLOYEE RESOURCE ADMINISTRATION LP	12400 COIT RD #1030	DALLAS	TX	75251
ENGINEERED STRUCTURES INC	12400 W OVERLAND RD	BOISE	ID	83709
ENGLEWOOD CONSTRUCTION INC	9747 W FOSTER AVENUE	SCHILLER PARK	IL	60176
ENTERPRISE ELECTRICAL & MECHANICAL CO	9211 CASTLEGATE DRIVE	INDIANAPOLIS	IN	46256
ENVIRONMENTAL FABRICS INC	85 PASCON CT	GASTON	SC	29053
ENVISION CONTRACTORS LLC	2960 FAIRVIEW DR	OWENSBORO	KY	42303
EVCO NATIONAL INC	339 OLD ST LOUIS RD	WOOD RIVER	IL	62095

Contractor	Address	City	State	Zip
EVERGREEN CONSULTING GROUP LLC	12184 SW MORNING HILL DR	TIGARD	OR	97223
EXCEL ENGINEERING INC	500 73RD AVE NE STE 119	FRIDLEY	MN	55432
EXPRESS INSULATION INC	N9450 HWY 175	THERESA	WI	53091
F & M SOUTHERN INC	2201 HAMLIN ROAD	UTICA	MI	48317
F L CRANE & SONS INC	508 S SPRING	FULTON	MS	38843
FABCON INCORPORATED	6111 WEST HIGHWAY 13	SAVAGE	MN	55378
FARABEE MECHANICAL INC	P O BOX 1748	HICKMAN	NE	68372
FARROW COMMERCIAL INC	416 AVIATION BLVD STE B	SANTA ROSA	CA	95403
FAYETTEVILLE PLUMBING & HEATING CO INC	P O BOX 1061	FAYETTEVILLE	AR	72702
FEDERAL FIRE PROTECTION INC	805 SECRETARY DR STE A	ARLINGTON	TX	76015
FEDERAL STEEL & ERECTION	200 E ALTON AVE	EAST ALTON	IL	62024
FIRE & LIFE SAFETY AMERICA INC	3017 VERNON ROAD	RICHMOND	VA	23228
FIRST CONSTRUCTION GROUP INC	3729 WEST AVE	BURLINGTON	IA	52601
FISHEL COMPANY THE	1810 ARLINGATE LN	COLUMBUS	OH	43228
FLEMINGTON CONSTRUCTION INC	9207 SLATER	OVERLAND PARK	KS	66212
FLORIDA INSTITUTE OF TECHNOLOGY INC	150 W UNIVERSITY BLVD	MELBOURNE	FL	32901
FMRS INC	405 ST PETERSBURG DR #6	OLDSMAR	FL	34677
FOUNDATION SPECIALIST INC	328 SOUTH 40TH STREET	SPRINGDALE	AR	72762
FRED CHRISTEN & SONS COMPANY THE	714 GEORGE ST	TOLEDO	OH	43608
FRONT RANGE ENVIRONMENTAL LLC	2110 W WRIGHT RD	MCHENRY	IL	60050
FRONTIER CONSTRUCTION COMPANY INC	48243 FRONTIER LANE	DEER RIVER	MN	56636
GAMMA CONSTRUCTION COMPANY	2808 JOANEL	HOUSTON	TX	77027
GARCIA CHICOINE ENTERPRISES INC	1118 NORTH 22ND STREET	LINCOLN	NE	68503
GAS ELECTRICAL SERVICES INC	216 W 2ND STREET	HOLSTEIN	IA	51025
GASS BRICKWORK INC	6205 COUNTRYSIDE LANE	FREEBURG	IL	62243
GBA SYSTEMS INTEGRATORS LLC	9801 RENNER BLVD	LENEXA	KS	66219
GEA POWER COOLING INC	143 UNION BLVD STE 400	LAKEWOOD	CO	80228
GEISSLER ROOFING CO INC	612 S 3RD ST	BELLEVILLE	IL	62220
GENESEE FENCE & SUPPLY CO	53861 GRATIOT	CHESTERFIELD	MI	48051
GEOFIRMA LLC	605 HARPETH KNOLL ROAD	NASHVILLE	TN	37221
GLASS DESIGN INC	BOX 568	SAPULPA	OK	74067
GOLEY INC	P O BOX 309	DUPO	IL	62239
GOOLSBY INC	3002 WEST MAIN STRET	BLYTHEVILLE	AR	72315
GORDON ENERGY AND DRAINAGE	15735 S MAHAFFIE	OLATHE	KS	66062
GRAHAM CONSTRUCTION INC	5TH & WALNUT	COLUMBIA	MO	65205
GRAYCLIFF ENTERPRISES INC	3300 BATTLEGROUND #100	GREENSBORO	NC	27410
GRE CONSTRUCTION	628 PALESTINE RD	CHESTER	IL	62233
GRP MECHANICAL COMPANY INC	1 MECHANICAL DR	BETHALTO	IL	62010
GUS CONST CO INC	606 ANTIQUE COUNTRY DR	CASEY	IA	50048
GYPSUM FLOORS OF AR/OK INC	PO BOX 1707	MULDROW	OK	74948
H & H SERVICES INC	391 OLD RTE N 66	HAMEL	IL	62046
H & H SYSTEMS & DESIGN INC	130 EAST MAIN ST	NEW ALBANY	IN	47150

Contractor	Address	City	State	Zip
H & L ELECTRIC INC	11130 LEGION DRIVE	SAINT GEORGE	KS	66535
H & M CONSTRUCTION CO INC	50 SECURITY DR	JACKSON	TN	38305
H & M INDUSTRIAL SERVICES INC	121 EDWARDS DR	JACKSON	TN	38302
H&H DRYWALL SPECIALTIES INC	3727 E 31ST STR	TULSA	OK	74135
HALL BROTHERS RECYCLING & RECLAMATION INC	124 INDIANA AVE	SALINA	KS	67401
HALL PAVING INC	1196 PONY EXPRESS HWY	MARYSVILLE	KS	66508
HAREN & LAUGHLIN RESTORATION COMPANY INC	8035 NIEMAN RD	LENEXA	KS	66214
HARTZ BLEACHERS LLC	14954 305TH STREET	LONG GROVE	IA	52756
HARVEY NASH INC	1680 ROUTE 23 N STE 300	WAYNE	NJ	07470
HAWKINS CONSTRUCTION COMPANY	2516 DEER PARK BLVD	OMAHA	NE	68105
HC BECK LTD	1820 MARKET ST FL 3	ST LOUIS	MO	63103
HECKERT CONSTRUCTION CO INC	746 E 520TH AVE	PITTSBURG	KS	66762
HENDERSON ENGINEERS INC	8325 LENEXA DR STE 400	LENEXA	KS	66214
HG DALLAS CONSULTING LLC	6860 N DALLAS PKWY	PLANO	TX	75024
HIGH CONCRETE GROUP LLC	4990 CHILDRENS PL	ST LOUIS	MO	63110
HIGH LINE SERVICES LLC	410 S HIGH STREET	DIGHTON	KS	67839
HINRICHS GROUP INC THE	340 OFFICE COURT STE A	FAIRVIEW HEIGHTS	IL	62208
HOFFMANN INC	6001 49TH ST S	MUSCATINE	IA	52761
HOLLIS ROOFING INC	P O BOX 2229	COLUMBUS	MS	39704
HOOPER CORPORATION	P O BOX 7455	MADISON	WI	53707
HORIZON GENERAL CONTRACTORS INC	7315 W ELIZABETH LN	FT WORTH	TX	76116
HORIZON RETAIL CONSTRUCTION INC	1458 HORIZON BLVD	RACINE	WI	53406
HORIZONTAL BORING & TUNNELING CO	505 S RIVER AVE	EXETER	NE	68351
HOWARD CONCRETE CONSTRUCTION	14600 S 690 ROAD	WYANDOTTE	OK	74370
HPI LLC	15503 WEST HARDY STREET	HOUSTON	TX	77060
HUMAN CAPITAL CONCEPTS LLC	1075 BROAD RIPPLE AVE	INDIANAPOLIS	IN	46220
HUSTON CONTRACTING INC	25640 W 143RD ST	OLATHE	KS	66061
HUTTON CONTRACTING CO INC	HWY 50	LINN	MO	65051
I & I CONSTRUCTION INC	21050 N BRADY ST STE A	DAVENPORT	IA	52804
IMPERIAL ROOF SYSTEMS CO	203 ARMOUR ST	WEST UNION	IA	52175
INDUSTRY SERVICES CO INC	5550 TODD ACRES DR	MOBILE	AL	36619
INGRAM CONSTRUCTION COMPANY INC OF	173 HOY RD	MADISON	MS	39110
INTELIGENTE SOLUTIONS INC	17199 N LAUREL PK DR #321	LIVONIA	MI	48152
INTERNATIONAL INDUSTRIAL CONTRACTING CORPORATION	35900 MMOUND RD	STERLING HEIGHTS	KS	48310
IRBY CONSTRUCTION CO	817 S STATE ST	JACKSON	MS	39201
ISEC INC	33 INVERNESS DR E	ENGLEWOOD	CO	08990
ISIS CONSULTANTS LLC	6200 FEGENBUSH LANE	LOUISVILLE	KY	40228
J & K CONTRACTING OF KANSAS LC	801 WEST 6TH STREET	JUNCTION CITY	KS	66441
J E REEDY INC	4276 N CR 25 E	SEYMOUR	IN	47274
JACKSON DEAN CONSTRUCTION INC	3414 S 116TH ST	SEATTLE	WA	98168
JACOBS LADDER INC	2325 COBDEN SCHOOL ROAD	COBDEN	IL	62920

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JACOBSON DANIELS ASSOCIATION	121 PEARL STREET	YPSILANTI	MI	48197
JAMAR COMPANY THE	1100 OLD HIGHWAY 8 NW	NEW BRIGHTON	MN	55112
JAMES M BARB CONST INC	10701 RANCHITOS RD NE	ALBUQUERQUE	NM	87122
JAMES N GRAY CONSTRUCTION CO	250 W MAIN ST	LEXINGTON	KY	40507
JD FINNEGAN INC	1724 BERKELEY WAY	SACRAMENTO	CA	95819
JD FRANKS INC	1602 S BELTINE ROAD	DALLAS	TX	75253
JEN MECHANICAL INC	803 HOPP HOLLOW DR	ALTON	IL	62002
JESCO INC	2020 MCCULLOUGH BLVD	TUPELO	MS	38801
JF BRENNAN CO INC	820 BAINBRIDGE ST	LA CROSSE	WI	54603
JOHN A PAPALAS & CO	1187 EMPIRE	LINCOLN PARK	MI	48146
JOHN E GREEN COMPANY	220 VICTOR AVE	HIGHLAND PARK	MI	48203
JOHNSONS BUILDERS	1455 HODGES FERRY ROAD	DOYLE	TN	38559
JOLLEY CONSTRUCTION COMPANY	2034 HAMILTON PL BLVD 200	CHATTANOOGA	TN	37421
JOMAX CONSTRUCTION COMPANY INC	S 281 HWY	GREAT BEND	KS	67530
JP PIPELINE CONSTRUCTION INC	81 ARROWHEAD ROAD	INMAN	KS	67546
JR JENSEN CONSTRUCTION COMPANY	814 21ST AVENUE EAST	SUPERIOR	WI	54880
K R SWERDFEGER CONSTRUCTION INC	421 E INDUSTRIAL BLVD	PUEBLO WEST	CO	81007
KAISER ELECTRICAL CONTRACTORS INC	310A ERIE AVENUE	MORTON	IL	61550
KANSAS BUSINESS FORMS AND SUPPLIES INC	505 MAIN ST	BELTON	MO	64012
KASBOHM CUSTOM DRILLING INC	11404 OAKTON RD	SAVANNA	IL	61074
KBS CONSTRUCTORS INC	1701 SW 41ST	TOPEKA	KS	66609
KENT ANDERSON CONCRETE LP	830 E VALLEY RIDGE BLVD	LEWISVILLE	TX	75057
KILIAN CORPORATION THE	608 S INDEPENDENCE	MASCOUTAH	IL	62258
KIM CON INC	10003 S 152ND ST	OMAHA	NE	68138
KING OF TEXAS ROOFING COMPANY LP	307 GILBERT CIRCLE	GRAND PRAIRIE	TX	75050
KING PIPELINE INC	7141 AMANDA ROAD	LINCOLN	NE	68507
KINLEY CONSTRUCTION COMPANY	201 N UNION ST BNK RM 502	OLEAN	NY	14760
KINLEY CONSTRUCTION GROUP LP	4025 WOODLAND PK BLVD 410	ARLINGTON	TX	76013
KOSS CONSTRUCTION CO	4090 WESTOWN PKWY STE B	W DES MOINES	IA	50266
KR&G EXCAVATING PARTNERS LLC	7 STONEHILL ROAD	OSWEGO	IL	60543
KTU CONSTRUCTORS A JOINT VENTURE	2708 NE INDENPENDENCE AVE	LEE'S SUMMIT	MO	64064
L B A AIR HTG & PLBG INC	6226 MARRIAM DR	MERRIAM	KS	66203
L G ELECTRIC INC	701 E 15TH ST	CHEYENNE	WY	82001
LAFORGE & BUDD CONST CO INC	DEN GEL	PARSON	KS	67357
LAKEVIEW CONSTRUCTION OF WISCONSIN	10505 CORPORATE DR #200	PLEASANT PRAIRI	WI	53158
LAMAR MOORE CONSTRUCTION INC	4401 STATE ROUTE 162	GRANITE CITY	IL	62040
LAVEREDIERE CONSTRUCTION INC	4055 W JACKSON ST	MACOMB	IL	61455
LEGACY ENGINEERING LLC	18662 MACARTHUR STE 457	IRVINE	CA	92617
LIGHTNING ELECTRIC INC	1102 HAPPY HOLLOW RD	FAYETTEVILLE	AR	72701
LIMBAUGH CONSTRUCTION CO INC	4186 HWY 162	GRANITE CITY	IL	62040
LONGS DRILLING SERVICE INC	6768 LYNX LANE	HARRISON	AR	72601
LPR CONSTRUCTION CO	1171 DES MOINES AVE	LOVELAND	CO	80537

Contractor	Address	City	State	Zip
LUKE & ASSOCIATES INC	3401 N COURTENAY PKWY 101	MERRITT ISLAND	FL	32953
LUSE THERMAL TECHNOLOGIES LLC	3990 ENTERPRISE COURT	AURORA	IL	60504
M & A JONES CONSTRUCTION CO INC	P O BOX 3944	BATESVILLE	AR	72503
M & W CONTRACTORS INC	400 S STEWART ST	E PEORIA	IL	61611
M&J ELECTRIC OF WICHITA LLC	1444 S ST CLAIR BLDG D	WICHITA	KS	67213
MAHAFFEY CONSTRCUTION	102 ESTATES DR	GREEN FOREST	AR	72638
MAINSTREET MUFFLER AND BRAKE	1406 N MAIN STREET	HARRISON	AR	72601
MAJOR DRILLING ENVIRONMENTAL LLC	2200 S 4000 W	SALT LAKE CITY	UT	84120
MAJOR REFRIGERATION CO INC	314 NORTHWESTERN AVENUE	NORFOLK	NE	68701
MARCO CONTRACTORS INC	377 NORTHGATE DR	WARRENDALE	PA	15086
MARKETING ASSOCIATES INC	131 ST JAMES WAY	MOUNT AIRY	NC	27030
MAROLD ELECTRIC INC	1925 SHERWOOD LAKE ESTATE	QUINCY	IL	62305
MCBRIDE ELECTRIC INC	3215 E 9TH N	WICHITA	KS	67208
MCCIZER PIPELINE INC	272 HWY 167 N	BALD KNOB	AR	72010
MDS BUILDERS INC	5455 N FEDERAL HWY	BOCA RATON	FL	33487
MEADOWS CONSTRUCTION CO INC	1014 FRONT ST	TONGANOXIE	KS	66086
MECHANICAL CONSTRUCTION SERVICES IN	1711 MELROSE DR	BENTON	AR	72015
MECHANICAL SERVICE COMPANY	5440 NORTHSHORE DRIVE	NORTH LITTLE ROCK	AR	72118
MERCON CORPORATION	28425 FOX RIDGE COURT	DANBURY	WI	54830
MERZ VAULT INC	512 COTTONWOOD	SALEM	IL	62881
METROPOLITAN PAVEMENT SPECIALISTS LLC	14012 GILES RD	OMAHA	NE	68138
MEYERS PLUMBING	4117 MAIN STREET RD	KEOKUK	IA	52632
MID SOUTH INDUSTRIAL INC	13994 HWY 79	BELLS	TN	38006
MID STATES ELECTRIC CO INC	P O BOX 156	S SIOUX CITY	NE	68776
MIDSOUTH SPECIALTY CONSTRUCTION LLC	5731 OSBOURNE RD	ST JOE	AR	72675
MIDWEST EASEMENT SERVICES LLC	2260 LAKE HILLS DRIVE	VANDALIA	IL	62471
MIDWEST MOLE INC	2460 N GRAHAM AVE	INDIANAPOLIS	IN	46218
MIKE PETERSON CONSTRUCTION	1941 RAMROD AVENUE STE A	HENDERSON	NV	89014
MILAN DECORATORS INC	2047 KEFAUVER DR	MILAN	TN	38358
MILESTONE CONSTRUCTION CO LLC	2002 SOUTH 48TH STREET	SPRINGDALE	AR	72762
MILLER DRILLING COMPANY INC	107 HELTON DR	LAWRENCEBURG	TN	38464
MILLER THE DRILLER	5125 E UNIVERSITY	DES MOINES	IA	50317
MILLS ELECTRICAL CONTRACTORS	2535 WALNUT HILL LN	DALLAS	TX	75229
MIXONSITE USA INCORPORATED	1501 ABBOTT COURT	BUFFALO GROVE	IL	60089
MJ HARRIS INC	2620 N WESTWOOD BLVD	POPLAR BLUFF	MO	63901
MLA GEOTHERMAL DRILLING LLC	205 HACKBERRY DRIVE	GRETNA	NE	68028
MODERN MIRROR & GLASS CO	20809 KRAFT BLVD	ROSEVILLE	MI	48066
MORRIS BECK CONSTRUCTION SERVICES INC	8100 COLONEL GLENN RD	LITTLE ROCK	AR	72204
MORRIS SHEA BRIDGE CO INC	1820 1ST AVENUE SOUTH	IRONDALE	AL	35210
MORRISSEY CONTRACTING CO	705 SOUTHMOOR PL	GODFREY	IL	62035
MULTIPLE CONCRETE ENTERPRISES	1680 W 1000 N	LAYTON	UT	84041
MW BUILDERS OF TEXAS INC	1701 N GENERAL BRUCE DR	TEMPLE	TX	76504

Contractor	Address	City	State	Zip
MYLES LORENTZ INC	48822 OLD RIVER BLUFF RD	ST PETER	MN	56082
NATGUN CORP	11 TEAL RD	WAKEFIELD	MA	01880
NEESE INC	303 DIVISION PO BOX 392	GRAND JUNCTION	IA	50107
NELSON INDUSTRIAL SERVICES INC	6021 MELROSE LN	OKLAHOMA CITY	OK	73127
NEW DIMENSION INC	631 E BIG BEAVER #109	TROY	MI	48083
NEW TEAM LLC	110 E BROWARD BLVD 2450	FT LAUDERDALE	FL	33301
NORTH MISSISSIPPI CONVEYOR COMPANY INC	HWY 7S LAFAYETTE CO RD370	OXFORD	MS	38655
NORTHERN CLEARING INC	1805 W MAIN ST	ASHLAND	WI	54806
NORTHWEST CONCRETE CUTTING CORP	1001 E 52ND ST NORTH	SIOUX FALLS	SD	57104
NORWOOD COMMERCIAL CONTRACTORS INC	214 PARK ST	BENSENVILLE	IL	60106
NU TEC ROOFING CONTRACTORS LLC	5025 EMCO DRIVE	INDIANAPOLIS	IN	46220
OLGOONIK SPECIALTY CONTRACTORS LLC	360 W BENSON BLVD STE 302	ANCHORAGE	AK	99503
OMNI ENGINEERING INC	14012 GILES RD	OMAHA	NE	68138
ON AIR SOLUTIONS INC	8807 EMMOTT RD 2000	HOUSTON	TX	77040
ON LINE DESIGN INC	12057 SHERATON LN	CINCINNATI	OH	45246
ORASURE TECHNOLOGIES INC	220 EAST FIRST STREET	BETHLEHEM	PA	18015
OUT OF BOUNDS INC	101 AIRPORT ROAD	ALTO	NM	88312
P1 GROUP INC	16210 W 108TH ST	LENEXA	KS	66219
PADGETT BUILDING & REMODELING INC	4200 SMELTING WORKS RD	BELLEVILLE	IL	62226
PASCHAL HEATING & AIR CONDITIONING CO INC	287 W COUNTY LINE ROAD	SPRINGDALE	AR	72764
PCI ROADS LLC	14123 42ND ST NE	ST MICHAEL	MN	55376
PCS CONSTRUCTION INC	30266 130TH STREET	WAYNE	OK	73095
PETTUS PLUMBING & PIPING INC	P O BOX 3237	MUSCLE SHOALS	AL	35662
PIASA COMMERCIAL INTERIORS INC	1001 S MORRISON AVE	COLLINSVILLE	IL	62234
PLUM RHINO CONSULTING LLC	1010 HUNTCLIFF STE 1350	ATLANTA	GA	30350
PLUS ONE MANUFACTURING INC	WEST HIGHWAY 20	VALENTINE	NE	69201
P-N-G CONTRACTING INC	917 CARLA DR	TROY	IL	62294
POLY CARB INC	33095 BAINBRIDGE ROAD	SOLON	OH	44139
POTTER ELECTRIC	2801 W 7TH STREET	ELK CITY	OK	73644
PRECAST ERECTORS INC	3500 VALLEY VISTA DR	HURST	TX	76053
PREDICTIVE TECHNOLOGIES INC	18827 570TH AVENUE	AUSTIN	MN	55912
PRICE GREGORY INTERNATIONAL INC	15660 N DALLAS PRKY #300	DALLAS	TX	75248
PROCTOR MECHANICAL CORPORATION	1100 HOAK DRIVE	WEST DES MOINES	IA	50265
PROFESSIONAL HVAC R SERVICES INC	2861 CENTER RD	AVON	OH	44011
PROJECT BUILDERS INC	1996 CLIFF VALLEY WAY NE	ATLANTA	GA	30329
PSF MECHANICAL INC	9322 14TH AVE SOUTH	SEATTLE	WA	98108
QCI THERMAL SYSTEMS INC	405 DRY CREEK AVENUE	WEST BURLINGTON	IA	52655
QUALITY ELECTRIC OF DOUGLAS COUNTY INC	1011 E 31ST STREET	LAWRENCE	KS	66046
QUICKWIRE COMMUNICATIONS INC	3620 PRESTIGE LANE	MINNETONKA	MN	55305
QUOVADX INC	7600 E ORCHARD RS 300 S	GREENWOOD VILLAGE	CO	80111
RAGAN MECHANICAL INC	702 W 76TH STREET	DAVENPORT	IA	52806
RAGO CONCRETE LTD	5610 FM 2218	RICHMOND	TX	77469

Contractor	Address	City	State	Zip
RAM CONSTRUCTION SERVICES OF MINNESOTA LLC	13800 ECKLES RD	LIVONIA	MI	48150
RAMSEY WELDING INC	5360 E 900TH AVENUE	ALTAMONT	IL	62411
RANGER PLANT CONSTRUCTIONAL CO INC	5851 E INTERSTATE 20	ABILENE	TX	79601
RCS CONSTRUCTION INC	197 OLD ST LOUIS RD	WOOD RIVER	IL	62095
RDCS INC	141 E 17TH STREET	CHICAGO HEIGHTS	IL	90411
REASONS CONSTRUCTION COMPANY INC	3825 EAST END DR	HUMBOLDT	TN	38343
REGENCY CONSTRUCTORS LLC	4744 JAMESTOWN AV STE 103	BATON ROUGE	LA	70808
RELIATECH INC	2280 SIBLEY COURT	EAGAN	MN	55122
REMCON GENERAL CONTRACTING INC	10311 RT E	JEFFERSON CITY	MO	65101
RENIER CONSTRUCTION CORPORATION	2164 CITY GATE DRIVE	COLUMBUS	OH	43219
REPIPE CONSTRUCTION LTD	131 N RICHEY	PASADENA	TX	77506
RETAIL CONSTRUCTION SERVICES INC	11343 39TH ST N	ST PAUL	MN	55042
RETAIL STOREFRONT GROUP INC	419 MIAMI AVE	LEEDS	AL	35094
RFB CONSTRUCTION CO INC	565 E 520TH AVE	PITTSBURGH	KS	66762
RFW CONSTRUCTION GROUP LLC	1315 N CHOUTEAU TRAFFICWA	KANSAS CITY	MO	64120
RHYTHM ENGINEERINGLLC	12351 W 96TH TER STE 107	LENEXA	KS	66214
RISE GROUP THE	120 S LASALLE ST STE 1350	CHICAGO	IL	60603
RL MURPHEY COMMERCIAL ROOF MANAGEMENT LLC	5699 N DARDEMAN ROAD	JUSTIN	TX	76247
ROBINETTE DEMOLITION INC	0 S 560 ROUTE 83	OAKBROOK	IL	60181
ROBINS & MORTON GROUP THE	400 SHADES CREEK PKWY	BIRMINGHAM	AL	35209
ROCK REMOVAL RESOURCES LLC	423 E BRONSON ROAD	SEYMOUR	WI	54165
ROD TECHS INC	5991 MIEJER DRIVE STE 22	MILFORD	OH	45150
ROEHL REFRIGERATED TRANSPORT LLC	1916 E 29TH STREET	MARSHFIELD	WI	54449
RON WEERS CONSTRUCTION INC	20765 S FOSTER COURT	BUCYRUS	KS	66013
ROSS & ASSOCIATES OF RIVER FALLS WISCONSIN LTD	246 SUMMIT	RIVER FALLS	WI	54022
RUSSELL CONSTRUCTION COMPANY	1414 MISSISSIPPI BLVD	BETTENDORF	IA	52722
RYAN COMPANIES US INC	50 S TENTH ST SUT 300	MINNEAPOLIS	MN	55403
S & B CONSTRUCTION CO LLC	117 E WASHINGTON ST	INDIANAPOLIS	IN	46204
S M STOLLER CORPORATION THE	105 TECHNOLOGY DR STE 190	BROOMFIELD	CO	80021
S T COTTER TURBINE SERVICES INC	2167 196TH STREET EAST	CLEARWATER	MN	55320
SA SMITH ELECTRIC INC	525 JERSEY ST	QUINCY	IL	62301
SASCO	1227 N MARKET BLVD	SACRAMENTO	CA	95834
SCHEAR CORPORATION	5490 LEE STREET	LEHIGH ACRES	FL	33971
SCHMIDT CONSTRUCTION	2549 BURMEISTER ROAD	STURGEON BAY	WI	54235
SCHUMACHER ELEVATOR COMPANY	ONE SCHUMAKER WAY	DENVER	IA	50622
SCHUPPS LINE CONSTRUCTION INC	10 PETRA LANE	ALBANY	NY	12205
SCHWEITZER ENGINEERING LABORATORIES INC	2350 NE HOPKINS CT	PULLMAN	WA	99163
SEK HEAT & AIR INC	422 W ATKINSON	PITTSBURG	KS	66762
SHAFER GROUP LLC	29150 C DRIVE NORTH	ALBION	MI	49224
SHAKTHY INFORMATION SYSTEMS INC	13910 FALCONCREST ROAD	GERMANTOWN	MD	20874
SHAWNEE MISSION TREE SERVICE INC	8250 COLE PKWY	SHAWNEE MSN	KS	66227

Contractor	Address	City	State	Zip
SHIELDS TELECOMM INC	7 CIRCLE DR	MOUNT VERNON	IL	62864
SHILLING CONSTRUCTION CO INC	555 POYNTZ AVE STE 260	MANHATTAN	KS	66502
SIERRA BRAVO CONTRACTORS LLC	7038 HWY 154	SESSER	IL	62884
SIMMONS BROWDER GIANARIS ANGELIDES & BARNERD LLC	707 BERKSHIRE BLVD	EAST ALTON	IL	62024
SJ LOUIS CONSTRUCTION INC	3032 COUNTY ROAD 138	WAITE PARK	MN	56387
SKYLIGHT FINANCIAL INC	1455 LINCOLN PKWY STE 600	ATLANTA	GA	30346
SKYTOP TOWERS INC	13503 W US HWY 34	MALCOLM	NE	68402
SLUDGE TECHNOLOGY INC	8101 W 33RD STREET S	MUSKOGEE	OK	74401
SNYDER ENVIRONMENTAL & CONSTRUCTION INC	124 W CAPITOL AVE STE1820	LITTLE ROCK	AR	72201
SOUTHEAST DIRECTIONAL DRILLING LLC	3117 N CESSDA AVE	CASA GRANDE	AZ	85222
SOUTHERN CONCRETE PRODUCTS INC	266 E CHRUCH STREET	LEXINGTON TN	TN	38351
SOUTHWINDS INSPECTION CORP	RT 2 BOX 88A	KINGFISHER	OK	73750
SPECTRA TECH LLC	16100 ALLISONVILLE RD	NOBLESVILLE	IN	46060
SPORTS METALS INC	P O BOX 1338	PHENIX CITY	AL	36868
SPRAYWORKS EQUIPMENT GROUP LLC	11407 IMMEL AVE NE	HARTVILLE	OH	44632
STANDARD HEATING AND AIR CONDITIONING INC	11746 PORTAL ROAD	LA VISTA	NE	68128
STEPHENS & SMITH CONSTRUCTION CO INC	1542 S 1ST ST	LINCOLN	NE	68502
STILL CONTRACTORS LLC	15740 S MAHAFFIE ST	OLATHE	KS	66062
STOCK ROOFING COMPANY LLC	12275 ST CHARLES ROCK RD	BRIDGETON	MO	63044
STORE OPENING SOLUTIONS LLC	800 MIDDLE TENNESSE BLVD	MURFREESBORO	TN	37129
STORK TWIN CITY TESTING CORPORATION	662 CROMWELL AVENUE	ST PAUL	MN	55114
STREICHER EXCAVATING INC	1718 EAST BREMER AVE	WAVERLY	IA	50677
STRINGER CONSTRUCTION COMPANY INC	6141 LUCILE AVE	SHAWNEE	KS	66203
STRUKEL ELECTRIC INC	375 W WALNUT ST	GIRARD	KS	66743
STUEVE CONSTRUCTION COMPANY	2201 E OAK ST	ALGONA	IA	50511
STURZENBECKER CONSTRUCTION COMPANY INC	1113 44TH AVE N STE 300	MYRTLE BEACH	SC	29577
SUNCON INC	#2 TERMINAL DR STE 17A	EAST ALTON	IL	62002
SUPERIOR INSULATION INC	34857 BRUSH STREET	WAYNE	MI	48184
SUPERIOR OPERATING SYSTEMS INC	1721 S 42ND STREET	ROGERS	AR	72758
SURF PREP INC	19305 HAYDEN COURT	BOOKFIELD	WI	53045
SURFACE PREPARATION TECHNOLOGIES INC	81 TEXACO ROAD	MECHANICSBURG	PA	17055
SW HUFFMAN CONSTRUCTION INC	PO BOX 99	OTTUMWA	IA	52501
SWANSTON EQUIPMENT COMPANY	3404 MAIN AVE	FARGO	ND	58103
SYNERGY REFRIGERATION INC	1680 ROBERTS BLVD	KENNESAW	GA	30144
SYRSTONE INC	7395 TAFT PARK DR	EAST SYRACUSE	NY	13057
T WINN CONSTRUCTION COMPANY	15018A CIRCLE	OMAHA	NE	68144
TAIL WIND TECHNOLOGIES CORPORATION	13911 RIDGEDALE DR #310	MINNETONKA	MN	55305
TANCO ENGINEERING INCORPORATED	1400 TAURUS COURT	LOVELAND	CO	80537
TANK BUILDERS INC	13400 TRINITY BLVD	EULESS	TX	76039
TASKE FORCE INC	1013 MAIN STREET	KEOKUK	IA	52632
TEAMWAY BUILDERS INC	100 TOWER DR 15	GREENVILLE	SC	29616

Contractor	Address	City	State	Zip
TECH TREND INC	5797 VALLEY VIEW DRIVE	ALEXANDRIA	VA	22310
TEKRAN INSTRUMENTS CORPORATION	330 NANTUCKET BLVD TORONT	ONT CAN M1P2P4	ON	99999
TELECRAFTER SERVICES LLC	13131 W CEDAR DR	LAKEWOOD	CO	80228
TENCON INC	530 JONES ST	VERONA	PA	15147
TENOCH CONSTRUCTION INC	6216 MISSION RD	FAIRWAY	KS	66205
TERWISSCHA CONSTRUCTION INC	1107 HAZELTINE BLVD MD 68	CHASKA	MN	55318
THOMPSON ELECTRONICS COMPANY	905 S BOSCH ROAD	PEORIA	IL	61607
TIC THE INDUSTRIAL COMPANY	188 INVERNESS DR W #700	ENGLEWOOD	CO	80012
TITAN BUILT LLC	11865 S CONLEY	OLATHE	KS	66061
TITAN CONTRACTING & LEASING CO INC	2205 RAGU DRIVE	OWENSBORO	KY	42302
TOMS TUCKPOINTING LLC	410 W ELM	CORNING	AR	72422
TONTO CONSTRUCTION INC	HWY 16 W 78TH ST	MUSKOGEE	OK	74401
TOURNEAR ROOFING CO	2605 SPRING LAKE RD	QUINCY	IL	62305
TRAC WORK INC	303 W KNOX	ENNIS	TX	75119
TRACY ELECTRIC INC	8025 S BROADWAY STREET	HAYSVILLE	KS	67060
TRAFFIC CALMING USA	110 THOMPSON RD #102A	HIRAM	GA	30141
TRAFFIC CONTROL SERVICES LLC	1411 STONERIDGE DRIVE	MIDDLETOWN	PA	17057
TRANS TEXAS TENNIS LTD	5212 WERNER STREET	HOUSTON	TX	77022
TRIAGE CONSULTING GROUP	221 MAIN STREET STE 1100	SAN FRANCISCO	CA	94105
TRUCK CRANE SERVICE COMPANY	2875 HIGHWAY 55	EAGAN	MN	55121
TULSA DYNASPAN INC	1601 E HOUSTON ST	BROKEN ARROW	OK	74012
TULSA INSPECTION RESOURCES INC	4111 S DARLINGTON #1000	TULSA	OK	74135
TULSA INSPECTION RESOURCES INC	12811 E 86TH PLACE N #106	OWASSO	OK	74055
TWEET GAROT MECHANICAL INC	2545 LARSEN RD	GREEN BAY	WI	54303
UCI INC	659 N MAIN	WICHITA	KS	67214
ULTIMATE THERMAL INC	P O BOX 34818	OMAHA	NE	68134
UNDERGROUND UTILITIES CONTRACTORS INC	403 COMMERCE PARK DR	CABOT	AR	72023
UNITED EXCEL CORPORATION	5425 ANTIOCH RD	MERRIAM	KS	66202
UNIVERSAL CABLE SERVICES INC	25292 W 150TH TERRACE	OLATHE	KS	66061
UNIVERSAL SERVICES TELECOMMUNICATIONS TECHS INC	12151 120TH STREET SOUTH	HASTINGS	MN	55033
US ASPHALT CO	14012 GILES RD	OMAHA	NE	68138
UTILITY SOLUTIONS LLC	17835 185TH STREET	TONGANOXIE	KS	66086
VECTOR CONSTRUCTION INC	3814 3RD AVE NW	FARGO	ND	58102
VEI GENERAL CONTRACTORS INC	P O BOX 1032	RUSSELLVILLE	AR	72811
VFP FIRE SYSTEMS INC	301 YORK AVE	ST PAUL	MN	55130
VICS CRANE & HEAVY HAUL INC	3000 145TH STREET EAST	ROSEMOUNT	MN	55068
VISIONSOFT INTERNATIONAL INC	1842 OLD NORCROSS RD 100	LAWRENCEVILLE	GA	30044
VISSER BROTHERS INC	1946 TURNER NW	GRAND RAPIDS	MI	49504
VISU SEWER CLEAN & SEAL INC	W230 N4855 BETKER RD	PEWAUKEE	WI	53072
VWC BUILDERS INC	425 W LACADENA DRIVE #12	RIVERSIDE	CA	92501
WALKER CONSTRUCTION CO INC	HWY 50 TO KAHOLA LAKE RD	EMPORIA	KS	66801

Contractor	Address	City	State	Zip
WALTERS MORGAN CONSTRUCTION INC	2616 TUTTLE CREEK BLVD	MANHATTAN	KS	66502
WEATHERCRAFT COMPANY OF GRAND ISLAND	PO BOX 80459	LINCOLN	NE	68501
WEATHERCRAFT COMPANY OF LINCOLN	545 J ST	LINCOLN	NE	68508
WEBB GROUNDS MAINTENANCE LLC	737 YOSEMITE DRIVE	INDIANAPOLIS	IN	46217
WELDMATION INC	31720 STEPHENSON HIGHWAY	MADISON HEIGHTS	MI	48071
WES LOCHRIDGE & ASSOCIATES GENERAL CONTRACTORS INC	1520 S CLEVELAND AVE	JOPLIN	MO	64801
WESTERN WATER CONSTRUCTORS INC	707 AVIATION BLVD	SANTA ROSA	CA	95403
WESTIN CONSTRUCTION COMPANY	10828 NESBITT AVE SO	BLOOMINGTON	MN	55437
WH BASS INC	5664 D PEACHTREE PKWY	NORCROSS	GA	30092
WHERTEC INC	1543 KINGSLEY AVE BLDG 6	ORANGE PARK	FL	32073
WHITE OAK CONSTRUCTION INC MILLWRIGHT DIVISION	105 INDUSTRIAL DRIVE	BALD KNOB	AR	72010
WHITE STAR CONSTRUCTION INC	6175 MIZE ROAD	SHAWNEE	KS	66226
WHITING TURNER CONTRACTING CO THE	300 E JOPPA RD	BALTIMORE	MD	21286
WHITWORTH COMMERCIAL	7423 CLEARHAVEN	DALLAS	TX	75248
WILKS MASONRY CORPORATION	16858 IH 20	CISCO	TX	76437
WINFIELD CONTRACTORS INC	212 NORTH PRAIRIE STREET	WAPELLO	IA	52653
WINGATE ARCHITECTURAL MILLWORKS CO	7516 US 59 NORTH	NACOGDOCHES	TX	75964
WISCONSIN FEED MILL BUILDERS INC	500 AMERICAN DRIVE	FRANCIS CREEK	WI	54214
WOLVERINE TECHNICAL STAFFING INC	315 NORTH MAIN STREET	ANN ARBOR	MI	48104
WR NEWMAN & ASSOCIATES INC	2854 LOGAN ST	NASHVILLE	TN	37211
WS BOWLWARE CONSTRUCTION INC	3140 W BRITTON RD STE 204	OKLAHOMA CITY	OK	73120
XENA HOMES INC	3901 100TH ST SW #6	LAKEWOOD	WA	98499
YOUNGLOVE CONSTRUCTION LLC	2015 EAST 7TH STREET	SIOUX CITY	IA	51101
ZIMMERMAN CONSTRUCTION COMPANY INC	12509 HEMLOCK ST	OVERLAND PARK	KS	66213
ZOLFO COOPER	101 EISENHOWER PKY 3RD FL	ROSELAND	NJ	07068

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript by email to dissolutions@sos.mo.gov.

NOTICE TO THE UNKNOWN CREDITORS OF TRI COUNTY REFERRAL SERVICES, LLC

You are hereby notified that on March 4, 2011, Tri County Referral Services, LLC, a Missouri limited liability company (the "Company"), the principal office of which is located in Franklin County, Missouri, filed a Notice of Winding Up with the Secretary of State of Missouri.

In order to file a claim with the Company, you must furnish the amount and the basis for the claim and provide all necessary documentation supporting this claim. All claims must be mailed to:

Tri County Referral Services, LLC
111 W. St. Louis St.
Pacific, Missouri 63069
Attention: John Heger

A claim against Tri County Referral Services, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST TRIPLE H ENTERPRISES OF MISSOURI, L.P.

On April 1, 2011, Triple H Enterprises of Missouri, L.P., a Missouri limited partnership (the "Partnership"), filed its Certificate of Cancellation of Limited Partnership with the Secretary of State of Missouri. The Partnership requests that any and all claims against the Partnership be presented by letter to the Partnership in care of Riezman Berger, P.C., ATTN: Richard N. Tishler, 7700 Bonhomme Avenue, 7th Floor, St. Louis, Missouri 63105. Each claim against the Partnership must include the following information: the name, the address and telephone number of the claimant; the amount of the claim; the date on which the claim arose; a brief description of the nature of or the basis for the claim; and any documentation related to the claim. All claims against the Partnership will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION OF LIMITED LIABILITY COMPANY
TO ALL CREDITORS OF AND CLAIMANTS AGAINST
WILSON SEPTIC SERVICES, LLC

On April 15, 2011, Wilson Septic Services, LLC, a Missouri limited liability company ("Company") filed its Notice of Winding Up with the Missouri Secretary of State effective on the filing date.

You are hereby notified if you believe you have a claim against Wilson Septic Services, LLC you must submit a summary in writing of the circumstances surrounding your claim to Joe Forck, 7730 Helias Spur, Jefferson City, MO 65101. The summary must include the following information: (1) the name, address and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; and (4) documentation supporting the claim.

All claims against Wilson Septic Services, LLC will be barred unless a proceeding to enforce the claim is commenced within three (3) years after publication of this Notice.

Rule Changes Since Update to Code of State Regulations

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—30 (2005) and 31 (2006). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RAN indicates a rule action notice, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
	OFFICE OF ADMINISTRATION				
1 CSR 10	State Officials' Salary Compensation Schedule				30 MoReg 2435 35 MoReg 1815
1 CSR 10-15.010	Commissioner of Administration	36 MoReg 273	36 MoReg 448		
	DEPARTMENT OF AGRICULTURE				
2 CSR 30-1.010	Animal Health		35 MoReg 1845	This Issue	
2 CSR 30-2.010	Animal Health		35 MoReg 1845	This Issue	
2 CSR 30-2.020	Animal Health		35 MoReg 1846	This Issue	
2 CSR 30-6.020	Animal Health		36 MoReg 524		
2 CSR 30-9.020	Animal Health	36 MoReg 217	36 MoReg 221		
2 CSR 80-5.010	State Milk Board		36 MoReg 980		
2 CSR 80-6.041	State Milk Board		36 MoReg 224	36 MoReg 1185	
2 CSR 90	Weights and Measures				35 MoReg 1284
2 CSR 90-10.001	Weights and Measures		36 MoReg 885		
2 CSR 90-10.011	Weights and Measures		36 MoReg 885		
2 CSR 90-10.012	Weights and Measures		36 MoReg 886		
2 CSR 90-10.013	Weights and Measures		36 MoReg 887		
2 CSR 90-10.014	Weights and Measures		36 MoReg 889		
2 CSR 90-10.015	Weights and Measures		36 MoReg 890		
2 CSR 90-10.020	Weights and Measures		36 MoReg 890		
2 CSR 90-10.040	Weights and Measures		36 MoReg 891		
2 CSR 90-10.060	Weights and Measures		36 MoReg 892R		
2 CSR 90-10.070	Weights and Measures		36 MoReg 892R		
2 CSR 90-10.090	Weights and Measures		36 MoReg 892		
2 CSR 90-10.120	Weights and Measures		36 MoReg 892		
2 CSR 90-10.130	Weights and Measures		36 MoReg 893		
2 CSR 90-10.140	Weights and Measures		36 MoReg 893		
2 CSR 90-10.145	Weights and Measures		36 MoReg 894		
2 CSR 90-10.150	Weights and Measures		36 MoReg 894		
2 CSR 90-10.155	Weights and Measures		36 MoReg 896		
2 CSR 90-10.160	Weights and Measures		36 MoReg 896		
2 CSR 90-10.165	Weights and Measures		36 MoReg 896		
2 CSR 90-10.170	Weights and Measures		36 MoReg 897		
2 CSR 90-10.175	Weights and Measures		36 MoReg 897		
2 CSR 90-10.180	Weights and Measures		36 MoReg 898		
2 CSR 90-10.185	Weights and Measures		36 MoReg 898		
2 CSR 90-30.080	Weights and Measures		36 MoReg 707		
2 CSR 90-30.086	Weights and Measures		36 MoReg 709		
2 CSR 110-3.010	Office of the Director		35 MoReg 1848	36 MoReg 1185	
	DEPARTMENT OF CONSERVATION				
3 CSR 10-4.135	Conservation Commission		36 MoReg 710	36 MoReg 1185	
3 CSR 10-5.205	Conservation Commission		36 MoReg 1033		
3 CSR 10-5.215	Conservation Commission		36 MoReg 710	36 MoReg 1185	
3 CSR 10-7.450	Conservation Commission		36 MoReg 710	36 MoReg 1186	
3 CSR 10-7.455	Conservation Commission				36 MoReg 676
3 CSR 10-8.515	Conservation Commission		36 MoReg 711	36 MoReg 1186	
3 CSR 10-9.110	Conservation Commission		36 MoReg 1034		
3 CSR 10-10.711	Conservation Commission		36 MoReg 711R	36 MoReg 1186R	
3 CSR 10-10.716	Conservation Commission		36 MoReg 712R	36 MoReg 1186R	
3 CSR 10-11.120	Conservation Commission		36 MoReg 1035		
3 CSR 10-11.205	Conservation Commission		36 MoReg 1035		
3 CSR 10-11.210	Conservation Commission		36 MoReg 1036		
3 CSR 10-12.110	Conservation Commission		36 MoReg 1036		
3 CSR 10-12.115	Conservation Commission		36 MoReg 1036		
3 CSR 10-12.125	Conservation Commission		36 MoReg 1037		
3 CSR 10-12.135	Conservation Commission		36 MoReg 1037		
3 CSR 10-12.140	Conservation Commission		36 MoReg 1038		
3 CSR 10-12.145	Conservation Commission		36 MoReg 1038		
3 CSR 10-20.805	Conservation Commission		36 MoReg 1039		
	DEPARTMENT OF ECONOMIC DEVELOPMENT				
4 CSR 240-2.010	Public Service Commission		36 MoReg 1039		
4 CSR 240-2.025	Public Service Commission		36 MoReg 1041		
4 CSR 240-2.030	Public Service Commission		36 MoReg 1041		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 240-2.040	Public Service Commission		36 MoReg 1044		
4 CSR 240-2.045	Public Service Commission		36 MoReg 1044R		
4 CSR 240-2.050	Public Service Commission		36 MoReg 1045		
4 CSR 240-2.060	Public Service Commission		36 MoReg 1045		
4 CSR 240-2.062	Public Service Commission		36 MoReg 1046		
4 CSR 240-2.065	Public Service Commission		36 MoReg 1051		
4 CSR 240-2.070	Public Service Commission		36 MoReg 1051		
4 CSR 240-2.075	Public Service Commission		36 MoReg 1053		
4 CSR 240-2.080	Public Service Commission		36 MoReg 1054		
4 CSR 240-2.085	Public Service Commission		36 MoReg 1056R		
4 CSR 240-2.110	Public Service Commission		36 MoReg 1057		
4 CSR 240-2.116	Public Service Commission		36 MoReg 1058		
4 CSR 240-2.125	Public Service Commission		36 MoReg 1058		
4 CSR 240-2.130	Public Service Commission		36 MoReg 1059		
4 CSR 240-2.135	Public Service Commission		36 MoReg 1060		
4 CSR 240-2.140	Public Service Commission		36 MoReg 1063		
4 CSR 240-2.160	Public Service Commission		36 MoReg 1063		
4 CSR 240-2.180	Public Service Commission		36 MoReg 1064		
4 CSR 240-3.163	Public Service Commission		35 MoReg 1610	36 MoReg 1071	
4 CSR 240-3.164	Public Service Commission		35 MoReg 1629	36 MoReg 1088	
4 CSR 240-3.510	Public Service Commission		35 MoReg 1736	36 MoReg 997	
4 CSR 240-20.093	Public Service Commission		35 MoReg 1647	36 MoReg 1105	
4 CSR 240-20.094	Public Service Commission		35 MoReg 1667	36 MoReg 1126	
4 CSR 240-20.100	Public Service Commission				36 MoReg 1002 36 MoReg 1008
4 CSR 240-22.010	Public Service Commission		35 MoReg 1737	This Issue	
4 CSR 240-22.020	Public Service Commission		35 MoReg 1738	This Issue	
4 CSR 240-22.030	Public Service Commission		35 MoReg 1741	This Issue	
4 CSR 240-22.040	Public Service Commission		35 MoReg 1746	This Issue	
4 CSR 240-22.045	Public Service Commission		35 MoReg 1749	This Issue	
4 CSR 240-22.050	Public Service Commission		35 MoReg 1753	This Issue	
4 CSR 240-22.060	Public Service Commission		35 MoReg 1761	This Issue	
4 CSR 240-22.070	Public Service Commission		35 MoReg 1766	This Issue	
4 CSR 240-22.080	Public Service Commission		35 MoReg 1769	This Issue	
4 CSR 240-32.190	Public Service Commission		35 MoReg 1848	36 MoReg 1186	36 MoReg 190
	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION				
5 CSR 50-345.105	Office of Quality Schools		36 MoReg 1065		
5 CSR 70-742.141	Special Education		N.A.	36 MoReg 997	
	DEPARTMENT OF HIGHER EDUCATION				
6 CSR 10-2.080	Commissioner of Higher Education		36 MoReg 229	36 MoReg 1187	
6 CSR 10-2.150	Commissioner of Higher Education		36 MoReg 230	36 MoReg 1187	
6 CSR 10-2.180	Commissioner of Higher Education		36 MoReg 980		
6 CSR 10-2.190	Commissioner of Higher Education		36 MoReg 982		
	DEPARTMENT OF TRANSPORTATION				
7 CSR 10-25.010	Missouri Highways and Transportation Commission				36 MoReg 1195
	DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS				
8 CSR 10-5.010	Division of Employment Security		This Issue		
	DEPARTMENT OF NATURAL RESOURCES				
10 CSR 10-2.040	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-3.060	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-4.040	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-5.030	Air Conservation Commission		36 MoReg 986R		
10 CSR 10-5.330	Air Conservation Commission		36 MoReg 14 36 MoReg 712		
10 CSR 10-5.340	Air Conservation Commission		36 MoReg 32 36 MoReg 730		
10 CSR 10-5.442	Air Conservation Commission		36 MoReg 38 36 MoReg 736		
10 CSR 10-5.455	Air Conservation Commission		36 MoReg 47 36 MoReg 745		
10 CSR 10-6.020	Air Conservation Commission		36 MoReg 51 36 MoReg 749		
10 CSR 10-6.060	Air Conservation Commission	36 MoReg 218	36 MoReg 86 36 MoReg 784		36 MoReg 676
10 CSR 10-6.065	Air Conservation Commission	36 MoReg 219	36 MoReg 95 36 MoReg 793		36 MoReg 677
10 CSR 10-6.200	Air Conservation Commission		36 MoReg 103 36 MoReg 801		
10 CSR 10-6.300	Air Conservation Commission		36 MoReg 816		
10 CSR 10-6.405	Air Conservation Commission		36 MoReg 986		
10 CSR 20-8.110	Clean Water Commission		35 MoReg 1454	This Issue	

Rule Number	Agency	Emergency	Proposed	Order	In Addition
10 CSR 20-10.010	Clean Water Commission *(Changed to 10 CSR 26-2.010)*		This Issue		
10 CSR 20-10.011	Clean Water Commission *(Changed to 10 CSR 26-2.011)*		This Issue		
10 CSR 20-10.012	Clean Water Commission *(Changed to 10 CSR 26-2.012)*		This Issue		
10 CSR 20-10.020	Clean Water Commission *(Changed to 10 CSR 26-2.020)*		This Issue		
10 CSR 20-10.021	Clean Water Commission *(Changed to 10 CSR 26-2.021)*		This Issue		
10 CSR 20-10.022	Clean Water Commission *(Changed to 10 CSR 26-2.022)*		This Issue		
10 CSR 20-10.030	Clean Water Commission *(Changed to 10 CSR 26-2.030)*		This Issue		
10 CSR 20-10.031	Clean Water Commission *(Changed to 10 CSR 26-2.031)*		This Issue		
10 CSR 20-10.032	Clean Water Commission *(Changed to 10 CSR 26-2.032)*		This Issue		
10 CSR 20-10.033	Clean Water Commission *(Changed to 10 CSR 26-2.033)*		This Issue		
10 CSR 20-10.034	Clean Water Commission *(Changed to 10 CSR 26-2.034)*		This Issue		
10 CSR 20-10.040	Clean Water Commission *(Changed to 10 CSR 26-2.040)*		This Issue		
10 CSR 20-10.041	Clean Water Commission *(Changed to 10 CSR 26-2.041)*		This Issue		
10 CSR 20-10.042	Clean Water Commission *(Changed to 10 CSR 26-2.042)*		This Issue		
10 CSR 20-10.043	Clean Water Commission *(Changed to 10 CSR 26-2.043)*		This Issue		
10 CSR 20-10.044	Clean Water Commission *(Changed to 10 CSR 26-2.044)*		This Issue		
10 CSR 20-10.045	Clean Water Commission *(Changed to 10 CSR 26-2.045)*		This Issue		
10 CSR 20-10.050	Clean Water Commission *(Changed to 10 CSR 26-2.050)*		This Issue		
10 CSR 20-10.051	Clean Water Commission *(Changed to 10 CSR 26-2.051)*		This Issue		
10 CSR 20-10.052	Clean Water Commission *(Changed to 10 CSR 26-2.052)*		This Issue		
10 CSR 20-10.053	Clean Water Commission *(Changed to 10 CSR 26-2.053)*		This Issue		
10 CSR 20-10.060	Clean Water Commission *(Changed to 10 CSR 26-2.070)*		This Issue		
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10 CSR 20-10.064	Clean Water Commission *(Changed to 10 CSR 26-2.075)*		This Issue		
10 CSR 20-10.065	Clean Water Commission *(Changed to 10 CSR 26-2.078)*		This Issue		
10 CSR 20-10.066	Clean Water Commission *(Changed to 10 CSR 26-2.082)*		This Issue		
10 CSR 20-10.067	Clean Water Commission *(Changed to 10 CSR 26-2.083)*		This Issue		
10 CSR 20-10.068	Clean Water Commission *(Changed to 10 CSR 26-2.080)*		This Issue		
10 CSR 20-10.070	Clean Water Commission *(Changed to 10 CSR 26-2.060)*		This Issue		
10 CSR 20-10.071	Clean Water Commission *(Changed to 10 CSR 26-2.061)*		This Issue		
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10 CSR 20-10.073	Clean Water Commission *(Changed to 10 CSR 26-2.063)*		This Issue		
10 CSR 20-10.074	Clean Water Commission *(Changed to 10 CSR 26-2.064)*		This Issue		
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10 CSR 20-11.091	Clean Water Commission		This IssueR		
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10 CSR 20-11.093	Clean Water Commission *(Changed to 10 CSR 26-3.093)*		This Issue		
10 CSR 20-11.094	Clean Water Commission *(Changed to 10 CSR 26-3.094)*		This Issue		
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10 CSR 20-11.101	Clean Water Commission *(Changed to 10 CSR 26-3.101)*		This Issue		
10 CSR 20-11.102	Clean Water Commission *(Changed to 10 CSR 26-3.102)*		This Issue		
10 CSR 20-11.103	Clean Water Commission *(Changed to 10 CSR 26-3.103)*		This Issue		
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10 CSR 20-11.105	Clean Water Commission *(Changed to 10 CSR 26-3.105)*		This Issue		
10 CSR 20-11.106	Clean Water Commission *(Changed to 10 CSR 26-3.106)*		This Issue		
10 CSR 20-11.107	Clean Water Commission *(Changed to 10 CSR 26-3.107)*		This Issue		
10 CSR 20-11.108	Clean Water Commission *(Changed to 10 CSR 26-3.108)*		This Issue		
10 CSR 20-11.109	Clean Water Commission *(Changed to 10 CSR 26-3.109)*		This Issue		
10 CSR 20-11.110	Clean Water Commission *(Changed to 10 CSR 26-3.110)*		This Issue		
10 CSR 20-11.111	Clean Water Commission *(Changed to 10 CSR 26-3.111)*		This Issue		
10 CSR 20-11.112	Clean Water Commission *(Changed to 10 CSR 26-3.112)*		This Issue		
10 CSR 20-11.113	Clean Water Commission *(Changed to 10 CSR 26-3.113)*		This Issue		
10 CSR 20-11.114	Clean Water Commission *(Changed to 10 CSR 26-3.114)*		This Issue		
10 CSR 20-11.115	Clean Water Commission *(Changed to 10 CSR 26-3.115)*		This Issue		
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10 CSR 23-4.030	Division of Geology and Land Survey		36 MoReg 120		
10 CSR 23-4.040	Division of Geology and Land Survey		36 MoReg 120R		
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10 CSR 26-2.045	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.045)*		This Issue		
10 CSR 26-2.050	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.050)*		This Issue		
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10 CSR 26-2.052	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.052)*		This Issue		
10 CSR 26-2.053	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.053)*		This Issue		
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10 CSR 26-2.062	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.072)*		This Issue		
10 CSR 26-2.063	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.073)*		This Issue		
10 CSR 26-2.064	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.074)*		This Issue		
10 CSR 26-2.070	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.060)*		This Issue		
10 CSR 26-2.071	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.061)*		This Issue		
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10 CSR 26-2.074	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.063)*		This Issue		
10 CSR 26-2.075	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.064)*		This Issue		
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10 CSR 26-2.080	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.068)*		This Issue		
10 CSR 26-2.082	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-10.066)*		This Issue		
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10 CSR 26-3.090	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.090)*		This Issue		
10 CSR 26-3.092	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.092)*		This Issue		
10 CSR 26-3.093	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.093)*		This Issue		
10 CSR 26-3.094	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.094)*		This Issue		
10 CSR 26-3.095	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.095)*		This Issue		
10 CSR 26-3.096	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.096)*		This Issue		
10 CSR 26-3.097	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.097)*		This Issue		
10 CSR 26-3.098	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.098)*		This Issue		
10 CSR 26-3.099	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.099)*		This Issue		
10 CSR 26-3.101	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.101)*		This Issue		
10 CSR 26-3.102	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.102)*		This Issue		
10 CSR 26-3.103	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.103)*		This Issue		
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10 CSR 26-3.107	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.107)*		This Issue		
10 CSR 26-3.108	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.108)*		This Issue		
10 CSR 26-3.109	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.109)*		This Issue		
10 CSR 26-3.110	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.110)*		This Issue		
10 CSR 26-3.111	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.111)*		This Issue		
10 CSR 26-3.112	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.112)*		This Issue		
10 CSR 26-3.113	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.113)*		This Issue		
10 CSR 26-3.114	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.114)*		This Issue		
10 CSR 26-3.115	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-11.115)*		This Issue		
10 CSR 26-4.080	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-13.080)*		This Issue		
10 CSR 26-5.010	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-15.010)*		This Issue		
10 CSR 26-5.020	Petroleum and Hazardous Substance Storage Tanks *(Changed from 10 CSR 20-15.020)*		This Issue		
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11 CSR 45-4.200	Missouri Gaming Commission		36 MoReg 1175		
11 CSR 45-4.500	Missouri Gaming Commission *(Changed to 11 CSR 45-5.400)*		36 MoReg 1176		
11 CSR 45-4.510	Missouri Gaming Commission		36 MoReg 1176R		
11 CSR 45-4.520	Missouri Gaming Commission		36 MoReg 1176R		
11 CSR 45-4.530	Missouri Gaming Commission *(Changed to 11 CSR 45-5.410)*		36 MoReg 1177		
11 CSR 45-4.540	Missouri Gaming Commission *(Changed to 11 CSR 45-5.420)*		36 MoReg 1177		
11 CSR 45-5.130	Missouri Gaming Commission		35 MoReg 1780	36 MoReg 1187	
11 CSR 45-5.192	Missouri Gaming Commission		36 MoReg 1178		
11 CSR 45-5.400	Missouri Gaming Commission *(Changed from 11 CSR 45-4.500)*		36 MoReg 1176		
11 CSR 45-5.410	Missouri Gaming Commission *(Changed from 11 CSR 45-4.530)*		36 MoReg 1177		
11 CSR 45-5.420	Missouri Gaming Commission *(Changed from 11 CSR 45-4.540)*		36 MoReg 1177		
11 CSR 45-7.070	Missouri Gaming Commission		35 MoReg 1780	36 MoReg 1187	
11 CSR 45-9.102	Missouri Gaming Commission		35 MoReg 1781	36 MoReg 1187	
11 CSR 45-9.105	Missouri Gaming Commission		35 MoReg 1781	36 MoReg 1188	
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12 CSR 10-41.010	Director of Revenue	35 MoReg 1735	35 MoReg 1787	36 MoReg 905	
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19 CSR 60-50.410	Missouri Health Facilities Review Committee		35 MoReg 1564	36 MoReg 999	
19 CSR 60-50.420	Missouri Health Facilities Review Committee		35 MoReg 1565	36 MoReg 999	
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19 CSR 60-50.500	Missouri Health Facilities Review Committee		35 MoReg 1571	36 MoReg 1001	
19 CSR 60-50.600	Missouri Health Facilities Review Committee		35 MoReg 1572	36 MoReg 1001	
19 CSR 60-50.700	Missouri Health Facilities Review Committee		35 MoReg 1572	36 MoReg 1001	
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20 CSR	Sovereign Immunity Limits				33 MoReg 2446 35 MoReg 318
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20 CSR 400-8.200	Life, Annuities and Health		36 MoReg 934		
20 CSR 2015-1.030	Acupuncturist Advisory Committee	36 MoReg 1173	36 MoReg 1179		
20 CSR 2063-1.005	Behavior Analyst Advisory Board		36 MoReg 129	36 MoReg 1149	
20 CSR 2063-1.010	Behavior Analyst Advisory Board	36 MoReg 5	36 MoReg 132	36 MoReg 1149	
20 CSR 2063-1.015	Behavior Analyst Advisory Board	36 MoReg 6	36 MoReg 135	36 MoReg 1149	
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20 CSR 2063-2.005	Behavior Analyst Advisory Board	36 MoReg 7	36 MoReg 143	36 MoReg 1149	
20 CSR 2063-2.010	Behavior Analyst Advisory Board		36 MoReg 148	36 MoReg 1150	
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20 CSR 2063-5.005	Behavior Analyst Advisory Board	36 MoReg 11	36 MoReg 167	36 MoReg 1151	
20 CSR 2070-2.090	State Board of Chiropractic Examiners	35 MoReg 1609			
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20 CSR 2150-7.010	State Board of Registration for the Healing Arts		35 MoReg 1791	36 MoReg 1192	
20 CSR 2150-7.100	State Board of Registration for the Healing Arts		35 MoReg 1792	36 MoReg 1193	
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	2011		
11-08	Activates the state militia in response to severe weather that began on April 22	April 25, 2011	Next Issue
11-07	Gives the director of the Department of Natural Resources the authority to temporarily suspend regulations in the aftermath of severe weather that began on April 22	April 25, 2011	Next Issue
11-06	Declares a state of emergency for the state of Missouri and activates the Missouri State Emergency Operations Plan due to severe weather that began on April 22	April 22, 2011	Next Issue
11-05	Orders the Missouri Department of Transportation to assist local jurisdictions in counties that: 1) received record snowfalls; and 2) continuing snow clearance exceeds their capabilities	Feb. 4, 2011	36 MoReg 883
11-04	Activates the state militia in response to severe weather that began on January 31, 2011	Jan. 31, 2011	36 MoReg 881
11-03	Declares a state of emergency exists in the state of Missouri and directs that the Missouri State Emergency Operations Plan be activated	Jan. 31, 2011	36 MoReg 879
11-02	Extends the declaration of emergency contained in Executive Order 10-27 and the terms of Executive Order 11-01 through February 28, 2011	Jan. 28, 2011	36 MoReg 877
11-01	Gives the Director of the Department of Natural Resources the authority to temporarily suspend regulations in the aftermath of severe winter weather that began on December 30	Jan. 4, 2011	36 MoReg 705
	2010		
10-27	Declares a state of emergency and directs the Missouri State Emergency Operations Plan be activated due to severe weather that began on December 30	Dec. 31, 2010	36 MoReg 446
Emergency Declaration	Proclaims an emergency declaration concerning the damage and structural integrity of the State Route A bridge over the Weldon Fork of the Thompson River	Sept. 28, 2010	35 MoReg 1531
10-26	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies	Sept. 24, 2010	35 MoReg 1529
10-25	Extends the declaration of emergency contained in Executive Order 10-22 for the purpose of protecting the safety and welfare of our fellow Missourians	July 20, 2010	35 MoReg 1244
10-24	Creates the Code of Fair Practices for the Executive Branch of State Government and supersedes paragraph one of Executive Order 05-30	July 9, 2010	35 MoReg 1167
Emergency Declaration	Proclaims that an emergency exists concerning the damage and structural integrity of the U.S. Route 24 bridge over the Grand River	July 2, 2010	35 MoReg 1165
10-23	Activates the state militia in response to severe weather that began on June 12	June 23, 2010	35 MoReg 1078
10-22	Declares a state of emergency and directs the Missouri State Emergency Operations Plan be activated due to severe weather that began on June 12	June 21, 2010	35 MoReg 1076
10-21	Activates the Missouri State Emergency Operations Center	June 15, 2010	35 MoReg 1018
10-20	Establishes the Missouri Civil War Sesquicentennial Commission	April 2, 2010	35 MoReg 754
10-19	Amends Executive Order 09-17 to give the commissioner of the Office of Administration supervisory authority over the Transform Missouri Project	March 2, 2010	35 MoReg 637
10-18	Establishes the Children in Nature Challenge to challenge Missouri communities to take action to enhance children's education about nature, and to increase children's opportunities to personally experience nature and the outdoors	Feb. 26, 2010	35 MoReg 573
10-17	Establishes a Missouri Emancipation Day Commission to promote, consider, and recommend appropriate activities for the annual recognition and celebration of Emancipation Day	Feb. 2, 2010	35 MoReg 525
10-16	Transfers the scholarship portion of the A+ Schools Program from the Missouri Department of Elementary and Secondary Education to the Missouri Department of Higher Education	Jan. 29, 2010	35 MoReg 447
10-15	Transfers the Breath Alcohol Program from the Missouri Department of Transportation to the Missouri Department of Health and Senior Services	Jan. 29, 2010	35 MoReg 445
10-14	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies	Jan. 29, 2010	35 MoReg 443
10-13	Directs the Department of Social Services to disband the Missouri Task Force on Youth Aging Out of Foster Care	Jan. 15, 2010	35 MoReg 364
10-12	Rescinds Executive Orders 98-14, 95-21, 95-17, and 94-19 and terminates the Governor's Commission on Driving While Intoxicated and Impaired Driving	Jan. 15, 2010	35 MoReg 363

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10-11	Rescinds Executive Order 05-41 and terminates the Governor's Advisory Council for Veterans Affairs and assigns its duties to the Missouri Veterans Commission	Jan. 15, 2010	35 MoReg 362
10-10	Rescinds Executive Order 01-08 and terminates the Personal Independence Commission and assigns its duties to the Governor's Council on Disability	Jan. 15, 2010	35 MoReg 361
10-09	Rescinds Executive Orders 95-10, 96-11, and 98-13 and terminates the Governor's Council on AIDS and transfers their duties to the Statewide HIV/STD Prevention Community Planning Group within the Department of Health and Senior Services	Jan. 15, 2010	35 MoReg 360
10-08	Rescinds Executive Order 04-07 and terminates the Missouri Commission on Patient Safety	Jan. 15, 2010	35 MoReg 358
10-07	Rescinds Executive Order 01-16 and terminates the Missouri Commission on Intergovernmental Cooperation	Jan. 15, 2010	35 MoReg 357
10-06	Rescinds Executive Order 05-13 and terminates the Governor's Advisory Council on Plant Biotechnology and assigns its duties to the Missouri Technology Corporation	Jan. 15, 2010	35 MoReg 356
10-05	Rescinds Executive Order 95-28 and terminates the Missouri Board of Geographic Names	Jan. 15, 2010	35 MoReg 355
10-04	Rescinds Executive Order 03-10 and terminates the Missouri Energy Policy Council	Jan. 15, 2010	35 MoReg 354
10-03	Rescinds Executive Order 03-01 and terminates the Missouri Lewis and Clark Bicentennial Commission	Jan. 15, 2010	35 MoReg 353
10-02	Rescinds Executive Order 07-29 and terminates the Governor's Advisory Council on Aging and assigns its duties to the State Board of Senior Services	Jan. 15, 2010	35 MoReg 352
10-01	Rescinds Executive Order 01-15 and terminates the Missouri Commission on Total Compensation	Jan. 15, 2010	35 MoReg 351

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For more about rule numbering please see page 5.02A of *Rulemaking 1-2-3 Drafting and Style Manual* which can be found online at http://www.sos.mo.gov/adrules/manual/manual.asp.